

December 8, 2006

Ms. Tova Wang
(Address)
(Address)

Dear Ms. Wang:

We are writing in response to your December 7, 2006 memorandum. As you know, the U.S. Election Assistance Commission (EAC) issued its first report on election crimes last week, based in large part on the work that was done for EAC by Job and you. The report contains the full and complete summaries of every interview conducted as well as every book, article, report or case that was reviewed. Rather than provide the synopsis of these interviews, EAC provided the individual summaries so readers could reach their own conclusions about the substance of the interviews.

Upon reviewing initial information about the Department of Justice interviews contained in the status report that was provided to the EAC Standards Board and EAC Board of Advisors and the information provided at the working group meeting in May 2006, those persons interviewed at the Department of Justice did not agree with certain characterizations of their statements contained in these materials. Therefore, EAC exercised its responsibility to make clarifying edits. The Department of Justice is an important prosecutorial agency engaged in enforcing Federal anti-fraud and anti-intimidation laws. Thus, it was important to EAC to assure that the summary of their comments did not lend confusion to an already complex and hotly-debated topic.

The report on voting fraud and voter intimidation will stand as adopted on December 7, 2006. Again, we thank you for the contributions you made to the EAC's initial research of these important issues.

Sincerely,

Deleted: The U.S. Election Assistance Commission believes that voting fraud and voter intimidation are very important, complex topics that should be studied and reported on fairly and accurately. As a clearinghouse of election administration information, EAC is committed to providing complete and comprehensive information to the election community and the public. ¶

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In its December 2006 report on voting fraud and voter intimidation,

Deleted: EAC honored this commitment by providing the readers of its report with

Deleted: It is incumbent upon us to provide them with the best and most complete data and research that we can.

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Deleted: Because of the lack of organization and cohesion in the draft provided by the consultants, that document would have led to greater confusion and division regarding the issues of voting fraud and voter intimidation. As such, EAC revised the draft report and provided the entirety of the supporting documentation to the public. ¶

¶
For these reasons, t

030430

Juliet E. Hodgkins/EAC/GOV
12/08/2006 04:38 PM

To Paul DeGregorio/EAC/GOV@EAC, Gracia
Hillman/EAC/GOV@EAC, "Davidson, Donetta"
<ddavidson@eac.gov>, Thomas R. Wilkey/EAC/GOV@EAC
cc Bert A. Benavides/EAC/GOV@EAC, Sheila A.
Banks/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC,
Matthew Masterson/EAC/GOV@EAC, jlayson@eac.gov
bcc
Subject Draft response to Tova Wang

Commissioners,

Jeannie and I have collaborated on the following draft response to Tova Wang's letter. Please let me know if you agree or have comments/edits.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005



(202) 566-3100 draft response to Tova Wang.doc

030431

December 8, 2006

Ms. Tova Wang
(Address)
(Address)

Dear Ms. Wang:

The U.S. Election Assistance Commission believes that voting fraud and voter intimidation are very important, complex topics that should be studied and reported on fairly and accurately. As a clearinghouse of election administration information, EAC is committed to providing complete and comprehensive information to the election community and the public.

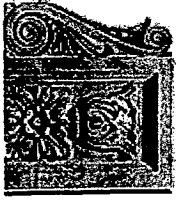
In its December 2006 report on voting fraud and voter intimidation, EAC honored this commitment by providing the readers of its report with the full and complete summaries of every interview conducted as well as every book, article, report or case that was reviewed. It is incumbent upon us to provide them with the best and most complete data and research that we can. Rather than provide only the synopsis of these interviews, EAC provided the readers with the entire summaries created by the consultants so readers could reach their own conclusions about the substance of the interviews.

With regard to the interviews of two of the personnel from the Department of Justice, EAC made clarifying edits. Upon reviewing initial information about their interviews contained in the status report provided to the EAC Standards Board and EAC Board of Advisors and the information provided by the consultants at the working group meeting, those persons interviewed did not agree with certain characterizations of their statements contained in these materials. The Department of Justice is an important prosecutorial agency engaged in enforcing Federal anti-fraud and anti-intimidation laws. Thus, it was important to EAC to assure that the summary of their comments did not lend confusion to an already complex and hotly-debated topic.

Because of the lack of organization and cohesion in the draft provided by the consultants, that document would have led to greater confusion and division regarding the issues of voting fraud and voter intimidation. As such, EAC revised the draft report and provided the entirety of the supporting documentation to the public.

For these reasons, the report on voting fraud and voter intimidation will stand as adopted on December 7, 2006.

030432



Bert A. Benavides/EAC/GOV

11/29/2006 03:40 PM

To PDegregorio@eac.gov, Donetta L. Davidson/EAC/GOV, Gracia Hillman/EAC/GOV, Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. cc Bryan Whitener/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV, Matthew Masterson/EAC/GOV@EAC, bbenavides@eac.gov, Elieen L. Collver/EAC/GOV@EAC

bcc

Subject Revised Final Agenda - Public Mtg 12-07 

The Chairman has approved the revised final agenda. Additions are under "New Business."

Julie, you are allotted an estimated 10 minutes for the Fraud and Intimidation Report, including Q & A
Tom, your portion is allotted an estimated 5 minutes for the Administrative Manual Adoption, including Q & A.
Brian/Gavin, please note: you are collectively allotted 15 minutes for your portion, and an anticipated 20 min for your Q & A.

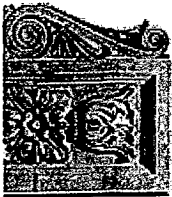
Thanks.



Public Meeting, 12-07-06, Wash., Revised Final Agenda.doc

Bert A. Benavides
Special Assistant to the Executive Director
U. S. Elections Assistance Commission
1225 New York Avenue, NW
Suite 1100
Washington, DC 20005
202-566-3114

Bert A. Benavides/EAC/GOV



Bert A. Benavides/EAC/GOV

11/29/2006 02:33 PM

To PDegregorio@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV, Jeannie Layson/EAC/GOV
cc Bryan Whitener/EAC/GOV@EAC, bbenavides@eac.gov, Matthew Masterson/EAC/GOV@EAC
Subject Revised Final Agenda - Public Mtg 12-07

Mr. Chairman, per Tom, I understand you have added two additional items under "New Business." Please review the revised final agenda and let me know if it meets with your approval so that Bryan can make the necessary changes on our website, et al.

Thanks.

030433

Bert A. Benavides
Special Assistant to the Executive Director
U. S. Elections Assistance Commission
1225 New York Avenue, NW
Suite 1100
Washington, DC 20005



202-566-3114 Public Meeting, 12-07-06, Wash., Final Agenda.doc

030434



U.S. Election Assistance Commission Public Meeting Agenda

**1225 New York Avenue, NW
Suite 150
Washington, DC
Thursday, December 7, 2006
10:00 AM – 3:30 PM EST**

Call to Order (Chairman DeGregorio)

Pledge of Allegiance (Chairman DeGregorio)

Roll Call

Adoption of Agenda (Chairman DeGregorio)

Welcoming Remarks (Chairman DeGregorio)

OLD BUSINESS:

- **Correction and Approval of Minutes from the October 26, 2006 Meeting**
(Chairman DeGregorio)
- **Report of the Executive Director** (Thomas Wilkey)

NEW BUSINESS:

- **Election of Officers for 2007**
- **Adoption of Fraud and Intimidation Report** (Julie Thompson-Hodgkins)
- **Adoption of Administrative Manual - Policy and Procedures** (Thomas Wilkey)
- **Review and Adoption of EAC Certification Program** (Brian Hancock, Director, Voting Systems Certification, U. S. EAC and Gavin Gilmour, Deputy General Counsel, U. S. EAC)



Break

- **Assessing the 2006 Election**

Panel 1: Election Officials

- The Honorable Deborah Markowitz, President, National Association of State Secretaries and Vermont Secretary of State
- Kevin J. Kennedy, President, National Association of Election Directors, and Executive Director, Wisconsin State Elections Board
- R. Doug Lewis, Executive Director, Election Center
- Elizabeth "Libby" Ensley, IACREOT Director-At-Large, Election Officials Election Commissioner

12:30 PM – 1:15 PM Lunch

Panel 2: Organizations and Academics

- Mary G. Wilson, President, League of Women Voters of the United States
- Jonah Goldman, Director, National Campaign for Fair Elections, Lawyers' Committee on Civil Rights
- Mark (Thor) F. Hearne, II - Partner, Lathrop & Gage, L.C.
- Dan Seligson, Editor, electionline.org

Panel 3: Election Technology Representative

- John S. Groh, Chair, Technology Electronics Council

Commissioners' Closing Remarks

Adjournment

Jeannie Layson /EAC/GOV

12/11/2006 09:18 AM

To klynndyson@eac.gov

cc dscott@eac.gov, bolu@eac.gov, ggilmour@eac.gov

bcc

Subject Brennan Center FOIA request

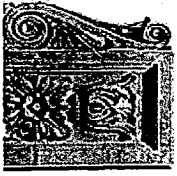
Karen,

I still do not have the RFPs we received for the voter fraud/ID project. I need that information ASAP. I this was a sole source contract and there were no other RFPs received, please indicate this in your reply. Please see language from original request below:

"In the event that the EAC denies my renewed request for the voter ID and voting fraud reports or delays another week in providing those materials, we respectfully request copies of (1) all requests for proposals and contracts relating to the voter ID and voting fraud reports; and (2) all written and electronic communications concerning the voter ID and voting fraud reports between the EAC and (a) the Eagleton Institute of Politics, (b) the Moritz College of Law, (c) Tova Wang, (d) Job Serebrov, and (e) any other individuals or entities, including but not limited to outside reviewers."

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

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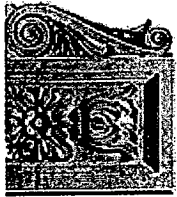


Bert A. Benavides/EAC/GOV
12/08/2006 10:46 AM

To Jeannie Layson/EAC/GOV
cc
bcc
Subject FOIA Request - Tova Wang

Bert A. Benavides
Special Assistant to the Executive Director
U. S. Elections Assistance Commission
1225 New York Avenue, NW
Suite 1100
Washington, DC 20005
202-566-3114

— Forwarded by Bert A. Benavides/EAC/GOV on 12/08/2006 10:44 AM —



Bert A. Benavides/EAC/GOV
11/15/2006 02:19 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc bbenavides@eac.gov
Subject RE: Conference call

Tova, due to the change in time, both Julie and Tom will be calling into the conference call from their respective residences. Thanks. Take care.

Bert A. Benavides
Special Assistant to the Executive Director
U. S. Elections Assistance Commission
1225 New York Avenue, NW
Suite 1100
Washington, DC 20005
202-566-3114

"Tova Wang" <wang@tcf.org>



"Tova Wang"
<wang@tcf.org>
11/09/2006 04:54 PM

To bbenavides@eac.gov, [REDACTED]
cc twilkey@eac.gov, jhodgkins@eac.gov
Subject RE: Conference call

Sounds good. I will come by the EAC since its literally a few feet from my office. I look forward to seeing you. Tova

Tova Andrea Wang, Democracy Fellow
The Century Foundation
1333 H Street, NW, Washington, D.C. 20005

Visit our Web site, www.tcf.org, for the latest news, analysis, opinions, and events.

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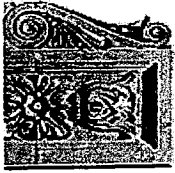
From: bbenavides@eac.gov [mailto:bbenavides@eac.gov]
Sent: Thursday, November 09, 2006 4:21 PM
To: wang@tcf.org; serebrov@sbcglobal.net
Cc: twilkey@eac.gov; jhodgkins@eac.gov; bbenavides@eac.gov
Subject: Conference call

Tova, Job -- I have scheduled 6:00 PM EST on Wednesday, November 15 for a conference call with Tom Wilkey and Julie Thompson-Hodgkins.

Conference call in # is 866-222-9044, Passcode 63114#

Bert A. Benavides
Special Assistant to the Executive Director
U. S. Elections Assistance Commission
1225 New York Avenue, NW
Suite 1100
Washington, DC 20005
202-566-3114

030439



Bert A. Benavides/EAC/GOV

12/08/2006 10:44 AM

To Jeannie Layson/EAC/GOV

cc

bcc

Subject FOIA Request - Tova Wang

Bert A. Benavides
Special Assistant to the Executive Director
U. S. Elections Assistance Commission
1225 New York Avenue, NW
Suite 1100
Washington, DC 20005
202-566-3114

— Forwarded by Bert A. Benavides/EAC/GOV on 12/08/2006 10:42 AM -----



Bert A. Benavides/EAC/GOV

11/13/2006 08:45 AM

To "Job Serebrov"

<serebrov@sbcglobal.net>@GSAEXTERNAL

cc wang@tcf.org, Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.
Thompson-Hodgkins/EAC/GOV

Subject Re: Conference call 

Job,

I have changed the time, per your request, of the conference call scheduled for Wednesday, November 15 to 6:30 PM EST.

Bert A. Benavides
Special Assistant to the Executive Director
202-566-3114
"Job Serebrov" <serebrov@sbcglobal.net>



"Job Serebrov"
<serebrov@sbcglobal.net>

11/09/2006 06:33 PM

To bbenavides@eac.gov, wang@tcf.org

cc

Subject Re: Conference call

6:00 pm will not work for me as I am in route home. It would have to be between 6:30 and 7:00 pm your time. Remember I am one hour behind.

Job

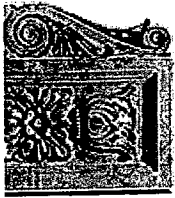
--- bbenavides@eac.gov wrote:

> Tova, Job -- I have scheduled 6:00 PM EST on
> Wednesday, November 15 for a
> conference call with Tom Wilkey and Julie
> Thompson-Hodgkins.
>

030440

> Conference call in # is 866-222-9044, Passcode
> 63114#
>
>
>
> Bert A. Benavides
> Special Assistant to the Executive Director
> U. S. Elections Assistance Commission
> 1225 New York Avenue, NW
> Suite 1100
> Washington, DC 20005
> 202-566-3114

—— Forwarded by Bert A. Benavides/EAC/GOV on 12/08/2006 10:42 AM ——



Bert A. Benavides/EAC/GOV

11/15/2006 02:19 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc bbenavides@eac.gov
Subject RE: Conference call

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Bert A. Benavides
Special Assistant to the Executive Director
U. S. Elections Assistance Commission
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Suite 1100
Washington, DC 20005
202-566-3114

"Tova Wang" <wang@tcf.org>



"Tova Wang"
<wang@tcf.org>

11/09/2006 04:54 PM

To bbenavides@eac.gov, serebrov@sbcglobal.net
cc twilkey@eac.gov, jhodgkins@eac.gov
Subject RE: Conference call

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Tova Andrea Wang, Democracy Fellow
The Century Foundation
1333 H Street, NW, Washington, D.C. 20005

Visit our Web site, www.tcf.org, for the latest news, analysis, opinions, and events.

030441

From: bbenavides@eac.gov [mailto:bbenavides@eac.gov]
Sent: Thursday, November 09, 2006 4:21 PM
To: wang@tcf.org; serebrov@sbcglobal.net
Cc: twilkey@eac.gov; jhodgkins@eac.gov; bbenavides@eac.gov
Subject: Conference call

Tova, Job – I have scheduled 6:00 PM EST on Wednesday, November 15 for a conference call with Tom Wilkey and Julie Thompson-Hodgkins.

Conference call in # is 866-222-9044, Passcode 63114#

Bert A. Benavides
Special Assistant to the Executive Director
U. S. Elections Assistance Commission
1225 New York Avenue, NW
Suite 1100
Washington, DC 20005
202-566-3114

Jeannie Layson /EAC/GOV
12/08/2006 10:21 AM

To twilkey@eac.gov, Bert A. Benavides/EAC/GOV@EAC
cc
bcc
Subject Brennan Center FOIA request

Just reminding you guys that I need all of Tom's emails and/or correspondence regarding the FOIA request below. I need this info by the end of the day. We interpret that this request does not cover emails or correspondence among staff--only b/w Tom and the parties mentioned below. The best and most efficient way is to print everything and bring it to me. I will review all of the documents and determine what is applicable to this request, as well as redact any information not applicable.

I need each of you to respond affirmatively or negatively to the FOIA request below. **If you have no documents in your possession related to this request , please reply to me with the words "no records."** If you have records, please identify them in an e-mail reply and attach them to the e-mail. If the document is not electronic, hand deliver them to me. Also, if you believe any of these related documents should be withheld, please provide a brief memo stating the reason for your position.

I need this information and/or a response by **COB December 5, 2006**. If you cannot comply by this date, please provide notification and an estimated time when you will provide the information and the reason why you cannot comply by the original deadline. Thanks for your cooperation. See request below:

Wendy Weiser of the Brennan Center for Justice has submitted a FOIA request for the voting fraud report prepared by our consultants and the voter ID report, as well as the following information:

"In the event that the EAC denies my renewed request for the voter ID and voting fraud reports or delays another week in providing those materials, we respectfully request copies of (1) all requests for proposals and contracts relating to the voter ID and voting fraud reports; and (2) all written and electronic communications concerning the voter ID and voting fraud reports between the EAC and (a) the Eagleton Institute of Politics, (b) the Moritz College of Law, (c) Tova Wang, (d) Job Serebrov, and (e) any other individuals or entities, including but not limited to outside reviewers."

Jeannie Layson
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www.eac.gov

030440




Gracia Hillman /EAC/GOV

12/04/2006 04:23 PM

To Juliet E. Hodgkins/EAC/GOV@EAC

cc "Davidson, Donetta" <ddavidson@eac.gov>, jlayson@eac.gov, Paul DeGregorio/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC

bcc

Subject Re: Revised summaries of interviews with Donsanto and Tanner 

Attached are my comments and suggested edits to this section. They should show up in green; at least that is the color on my screen.

I feel very strongly and therefore I recommend that EAC explain that it made clarifying edits to some of the text in the summaries of the DOJ interviews. The consultants provided us with lots of material and that is the only section we changed. If we don't offer a straightforward explanation, then I think we invite more problems and headaches. I offered suggested language in the attached.



DOJ Interviews.doc

030444

Interview with Craig Donsanto, Director, Elections Crimes Branch, Public Integrity Section, U.S. Department of Justice
January 13, 2006

The Department of Justice's (DOJ) Election Crimes Branch is responsible for supervising federal criminal investigations and prosecutions of election crimes.

Questions

How are Prosecution Decisions Made?

Craig Donsanto must approve all investigations that go beyond a preliminary stage, all charges, search warrant applications and subpoenas and all prosecutions. The decision to investigate is very sensitive because of the public officials involved. If a charge seems political, Donsanto will reject it. Donsanto gives possible theories for investigation. Donsanto and Noel Hillman will decide whether to farm out the case to an Assistant U.S. Attorney (AUSA). Donsanto uses a concept called predication. In-other-words, there must be enough evidence to suggest a crime has been committed. The method of evaluation of this evidence depends on the type of evidence and its source. There are two types of evidence---factual (antisocial behavior) and legal (antisocial behavior leading to statutory violations). Whether an indictment will be brought depends on the likelihood of success before a jury. Much depends on the type of evidence and the source. Donsanto said he "knows it when he sees it." Donsanto will only indict if he is confident of a conviction assuming the worst case scenario – a jury trial.

A person under investigation will first receive a target letter. Often, a defendant who gets a target letter will ask for a departmental hearing. The defendant's case will be heard by Donsanto and Hillman. On occasion, the assistant attorney general will review the case. The department grants such hearings because such defendants are likely to provide information about others involved.

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The Civil Rights Division, Voting Rights Section makes its own decisions on prosecution. The head of that division is John Tanner. There is a lot of cooperation between the Voting Section and the Election Crimes Branch.

Does the Decision to Prosecute Incorporate Particular Political Considerations within a State Such as a One Party System or a System in which the Party in Power Controls the Means of Prosecution and Suppresses Opposition Complaints?

Yes. Before, the department would leave it to the states. Now, if there is racial animus involved in the case, there is political bias involved, or the prosecutor is not impartial, the department will take it over.

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Does it Matter if the Complaint Comes from a Member of a Racial Minority?

No. But if the question involves racial animus, that has also always been an aggravating

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| factor, making it more likely the department will take it over

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What Kinds of Complaints Would Routinely Override Principles of Federalism?

| Federalism is no longer big issue. DOJ is permitted to prosecute whenever there is a candidate for federal office on the ballot.

Are There Too Few Prosecutions?

DOJ can't prosecute everything.

What Should Be Done to Improve the System?

The problem is asserting federal jurisdiction in non-federal elections. It is preferable for the federal government to pursue these cases for the following reasons: federal districts draw from a bigger and more diverse jury pool; the DOJ is politically detached; local district attorneys are hamstrung by the need to be re-elected; DOJ has more resources – local prosecutors need to focus on personal and property crimes---fraud cases are too big and too complex for them; DOJ can use the grand jury process as a discovery technique and to test the strength of the case.

In *U.S. v. McNally*, the court ruled that the mail fraud statute does not apply to election fraud. It was through the mail fraud statute that the department had routinely gotten federal jurisdiction over election fraud cases. 18 USC 1346, the congressional effort to “fix” *McNally*, did not include voter fraud.

As a result, the department needs a new federal law that allows federal prosecution whenever a federal instrumentality is used, e.g. the mail, federal funding, interstate commerce. The department has drafted such legislation, which was introduced but not passed in the early 1990s. A federal law is needed that permits prosecution in any election where any federal instrumentality is used.

Other Information

| The Department has held four symposia for District Election Officers (DEOs) and FBI agents since the initiation of the Ballot Access and Voting Integrity Initiative. In 2003, civil rights leaders were invited to make speeches, but were not permitted to take part in the rest of the symposium. All other symposia have been closed to the public.

Deleted: (Peg will be sending us the complete training materials used at those sessions. These are confidential and are the subject of FOIA litigation).

There are two types of attorneys in the division: prosecutors, who take on cases when the jurisdiction of the section requires it; the US Attorney has recused him or herself; or when the US Attorney is unable to handle the case (most frequent reason) and braintrust attorneys who analyze the facts, formulate theories, and draft legal documents.

| Cases

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Donsanto provided us with three case lists: cases still being investigated as of January 13, 2006 – confidential; election fraud prosecutions and convictions as a result of the Ballot Access and Voting Integrity Initiative October 2002-January 13, 2006; and cases closed for lack of evidence as of January 13, 2006.

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If we want more documents related to any case, we must get those documents from the states. The department will not release them to us.

Although the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate complaints of fraud, *the number of cases that the department is investigating and the number of indictments the department is pursuing are both up dramatically.*

Since 2002, the department has brought more cases against alien voters, felon voters, and double voters than ever before. Previously, cases were only brought against conspiracies to corrupt the process rather than individual offenders acting alone. For deterrence purposes, the Attorney General decided to add the pursuit of individuals who vote when not eligible to vote (noncitizens, felons) or who vote more than once. The department is currently undertaking three pilot projects to determine what works in developing the cases and obtaining convictions and what works with juries in such matters to gain convictions:

Comment [GH1]: ??conspiracies

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1. Felon voters in Milwaukee.

2. Alien voters in the Southern District of Florida. FYI – under 18 USC 611, to prosecute for “alien voting” there is no intent requirement. Conviction can lead to deportation. Nonetheless, the department feels compelled to look at mitigating factors such as was the alien told it was OK to vote, does the alien have a spouse that is a citizen.

3. Double voters in a variety of jurisdictions.

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The department does not maintain records of the complaints that come in from DEOs, U.S attorneys and others during the election that are not pursued by the department. Donsanto asserted that U.S. attorneys never initiate frivolous investigations.

According to the new handbook, the department can take on a case whenever there is a federal candidate on the ballot

030447

Interview with John Tanner, Chief, Voting Section, Civil Rights Division, U.S. Department of Justice

Deleted: Director

February 24, 2006

The Department of Justice's (DOJ) Voting Section is charged with the civil enforcement of the Voting Rights Act, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the National Voter Registration Act (NVRA), and Title III of the Help America Vote Act (HAVA).

Authority and Process

The Voting Section, in contrast to the Public Integrity Section as Craig Donsanto described it, typically focuses only on systemic problems resulting from government action or inaction, not problems caused by individuals. Indeed, the section never goes after individuals because it does not have the statutory authority to do so. In situations in which individuals are causing problems at the polls and interfering with voting rights, the section calls the local election officials to resolve it.

Federal voting laws enforced by the section only apply to state action, so the section only sues state and local governments – it does not have any enforcement power over individuals. Most often, the section enters into consent agreements with governments that focus on poll worker training, takes steps to restructure how polls are run, and deals with problems on Election Day on the spot. Doing it this way has been most effective – for example, while the section used to have the most observers in the South, with systematic changes forced upon those jurisdictions, the section now does not get complaints from the South.

The section can get involved even where there is no federal candidate on the ballot if there is a racial issue under the 14th and 15th Amendments.

When the section receives a complaint, attorneys first determine whether it is a matter that involves individual offenders or a systemic problem. When deciding what to do with the complaint, the section errs on the side of referring it criminally to avoid having any civil litigation complicate a possible criminal case.

When a complaint comes in, the attorneys ask questions to see if there are even problems there that the complainant is not aware are violations of the law. For example, in the Boston case, the attorney did not just look at Spanish language cases under section 203, but also brought a Section 2 case for violations regarding Chinese and Vietnamese voters. When looking into a case, the attorneys look for specificity, witnesses and supporting evidence.

Often, lawsuits bring voluntary compliance.

Voter Intimidation

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Many instances of what some people refer to as voter intimidation are more unclear now. For example, photographing voters at the polls has been called intimidating, but now everyone is at the polls with a camera. It is hard to know when something is intimidation and it is difficult to show that it was an act of intimidation.

The fact that both parties are engaging in these tactics now makes it more complicated. It makes it difficult to point the finger at any one side.

The inappropriate use of challengers on the basis of race would be a violation of the law. Mr. Tanner was unaware that such allegations were made in Ohio in 2004. He said there had never been a formal investigation into the abusive use of challengers.

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However, Mr. Tanner said the department was able to informally intervene in challenger situations in Florida, Atkinson County, Georgia and in Alabama, as was referenced in a February 23 Op-Ed in USA Today. Mr. Tanner reiterated the section takes racial targeting very seriously.

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Deceptive practices are committed by individuals and would be a matter for the Public Integrity Section. Local government would have to be involved for the Voting Section to become involved.

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Unequal implementation of ID rules, or asking minority voters only for ID would be something the section would go after. Mr. Tanner was unaware of allegations of this in 2004. He said this is usually a problem where you have language minorities and the poll workers cannot understand the voters when they say their names. The section has never formally investigated or solely focused a case based on abuse of ID provisions. However, implementation of ID rules was part of the Section 2 case in San Diego. Mr. Tanner reiterated that the section is doing more than ever before.

When asked about the section's references to incidents of vote fraud in the documents related to the new state photo identification requirements, Mr. Tanner said the section only looks at retrogression, not at the wisdom of what a legislature does. In Georgia, for example, everyone statistically has identification, and more blacks have ID than whites. With respect to the letter to Senator Kit Bond regarding voter ID, the section did refer to the perception of concern about dead voters because of reporting by the Atlanta Journal-Constitution. It is understandable that when you have thousands of bogus registrations that there would be concerns about polling place fraud. Very close elections make this even more of an understandable concern. Putting control of registration lists in the hands

of the states will be helpful because at this higher level of government you find a higher level of professionalism.

It is hard to know how much vote suppression and intimidation is taking place because it depends on one's definition of the terms – they are used very loosely by some people. However, the enforcement of federal law over the years has made an astounding difference so that the level of discrimination has plummeted. Registration of minorities has soared, as can be seen on the section's website. Mr. Tanner was unsure if the same was true with respect to turnout, but the gap is less. That information is not on the section's website.

The section is not filing as many Section 2 cases as compared to Section 203 cases because many of the jurisdictions sued under Section 2 in the past do not have issues anymore. Mr. Tanner said that race based problems are rare now.

NVRA has been effective in opening up the registration process. In terms of enforcement, Mr. Tanner said they do what they can when they have credible allegations. There is a big gap between complaints and what can be substantiated. Mr. Tanner stated that given the high quality of the attorneys now in the section, if they do not investigate it or bring action, that act complained of did not happen.

Recommendations

Mr. Tanner did not feel it was appropriate to make recommendations.

Consultants Note: Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. We did not have access to any information about or data from the section's election complaint in-take phone logs or data or even general information from the Interactive Case Management (ICM) system-its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws. Only a selected few samples of attorney-observer reports were provided, reports that every Voting Section attorney who is observing elections at poll sites on Election Day is required to submit. Mr. Tanner would not discuss any current investigations or cases the section is involved in.

EAC made clarifying edits to this portion of the consultants' report.

Comment [GH2]: The consultants did not say, "we contend," and I do not think EAC should put words in their mouth, so to speak.

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Comment [GH3]: I feel quite strongly that EAC needs to acknowledge that it edited this portion of the consultants' report because of all the materials they submitted and that we are attaching as appendices, this is the only section we are changing.

Juliet E. Hodgkins/EAC/GOV
12/01/2006 03:23 PM

To Paul DeGregorio/EAC/GOV@EAC, Gracia
Hillman/EAC/GOV@EAC, "Davidson, Donetta"
<ddavidson@eac.gov>, Thomas R. Wilkey/EAC/GOV@EAC
cc jlayson@eac.gov

bcc

Subject Revised summaries of interviews with Donsanto and Tanner

Commissioners,

Per your request, please see attached the proposed edits to the summaries of the interviews with Craig Donsanto and John Tanner.

Please get me your comments by Monday COB so that we can finalize this document in time for the meeting next week.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005



(202) 566-3100 Summaries of Interviews with Donsanto-Tanner redacted-revised.doc

030451

Interview with Craig Donsanto, Director, Elections Crimes Branch, Public Integrity Section, U.S. Department of Justice
January 13, 2006

The Department of Justice's (DOJ) Election Crimes Branch is responsible for supervising federal criminal investigations and prosecutions of election crimes.

Questions

How are Prosecution Decisions Made?

Craig Donsanto must approve all investigations that go beyond a preliminary stage, all charges, search warrant applications and subpoenas and all prosecutions. The decision to investigate is very sensitive because of the public officials involved. If a charge seems political, Donsanto will reject it. Donsanto gives possible theories for investigation. Donsanto and Noel Hillman will decide whether to farm out the case to an Assistant U.S. Attorney (AUSA). Donsanto uses a concept called predication. In-other-words, there must be enough evidence to suggest a crime has been committed. The method of evaluation of this evidence depends on the type of evidence and its source. There are two types of evidence--factual (antisocial behavior) and legal (antisocial behavior leading to statutory violations). Whether an indictment will be brought depends on the likelihood of success before a jury. Much depends on the type of evidence and the source. Donsanto said he "knows it when he sees it." Donsanto will only indict if he is confident of a conviction assuming the worst case scenario - a jury trial.

A person under investigation will first receive a target letter. Often, a defendant who gets a target letter will ask for a departmental hearing. The defendant's case will be heard by Donsanto and Hillman. On occasion, the assistant attorney general will review the case. The department grants such hearings because such defendants are likely to provide information about others involved.

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The Civil Rights Division, Voting Rights Section makes its own decisions on prosecution. The head of that division is John Tanner. There is a lot of cooperation between the Voting Section and the Election Crimes Branch.

Does the Decision to Prosecute Incorporate Particular Political Considerations within a State Such as a One Party System or a System in which the Party in Power Controls the Means of Prosecution and Suppresses Opposition Complaints?

Yes. Before, the department would leave it to the states. Now, if there is racial animus involved in the case, there is political bias involved, or the prosecutor is not impartial, the department will take it over.

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Does it Matter if the Complaint Comes from a Member of a Racial Minority?

No. But if the question involves racial animus, that has also always been an aggravating

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| factor, making it more likely the department will take it over

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What Kinds of Complaints Would Routinely Override Principles of Federalism?

| Federalism is no longer big issue. DOJ is permitted to prosecute whenever there is a candidate for federal office on the ballot.

Are There Too Few Prosecutions?

DOJ can't prosecute everything.

What Should Be Done to Improve the System?

The problem is asserting federal jurisdiction in non-federal elections. It is preferable for the federal government to pursue these cases for the following reasons: federal districts draw from a bigger and more diverse jury pool; the DOJ is politically detached; local district attorneys are hamstrung by the need to be re-elected; DOJ has more resources – local prosecutors need to focus on personal and property crimes---fraud cases are too big and too complex for them; DOJ can use the grand jury process as a discovery technique and to test the strength of the case.

In *U.S. v. McNally*, the court ruled that the mail fraud statute does not apply to election fraud. It was through the mail fraud statute that the department had routinely gotten federal jurisdiction over election fraud cases. 18 USC 1346, the congressional effort to “fix” *McNally*, did not include voter fraud.

As a result, the department needs a new federal law that allows federal prosecution whenever a federal instrumentality is used, e.g. the mail, federal funding, interstate commerce. The department has drafted such legislation, which was introduced but not passed in the early 1990s. A federal law is needed that permits prosecution in any election where any federal instrumentality is used.

Other Information

| The Department has held four symposia for District Election Officers (DEOs) and FBI agents since the initiation of the Ballot Access and Voting Integrity Initiative. In 2003, civil rights leaders were invited to make speeches, but were not permitted to take part in the rest of the symposium. All other symposia have been closed to the public.

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There are two types of attorneys in the division: prosecutors, who take on cases when the jurisdiction of the section requires it; the US Attorney has recused him or herself; or when the US Attorney is unable to handle the case (most frequent reason) and braintrust attorneys who analyze the facts, formulate theories, and draft legal documents.

Cases

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Donsanto provided us with three case lists: cases still being investigated as of January 13, 2006 – confidential; election fraud prosecutions and convictions as a result of the Ballot Access and Voting Integrity Initiative October 2002-January 13, 2006; and cases closed for lack of evidence as of January 13, 2006.

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If we want more documents related to any case, we must get those documents from the states. The department will not release them to us.

Although the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate complaints of fraud, *the number of cases that the department is investigating and the number of indictments the department is pursuing are both up dramatically.*

Since 2002, the department has brought more cases against alien voters, felon voters, and double voters than ever before. Previously, cases were only brought against conspiracies to corrupt the process rather than individual offenders acting alone. For deterrence purposes, the Attorney General decided to add the pursuit of individuals who vote when not eligible to vote (noncitizens, felons) or who vote more than once. The department is currently undertaking three pilot projects to determine what works in developing the cases and obtaining convictions and what works with juries in such matters to gain convictions:

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1. Felon voters in Milwaukee.

2. Alien voters in the Southern District of Florida. FYI – under 18 USC 611, to prosecute for “alien voting” there is no intent requirement. Conviction can lead to deportation. Nonetheless, the department feels compelled to look at mitigating factors such as was the alien told it was OK to vote, does the alien have a spouse that is a citizen.

3. Double voters in a variety of jurisdictions.

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The department does not maintain records of the complaints that come in from DEOs, U.S attorneys and others during the election that are not pursued by the department. Donsanto asserted that U.S. attorneys never initiate frivolous investigations.

According to the new handbook, the department can take on a case whenever there is a federal candidate on the ballot

030454

February 24, 2006

The Department of Justice's (DOJ) Voting Section is charged with the civil enforcement of the Voting Rights Act, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the National Voter Registration Act (NVRA), and Title III of the Help America Vote Act (HAVA).

Authority and Process

The Voting Section, in contrast to the Public Integrity Section as Craig Donsanto described it, typically focuses only on systemic problems resulting from government action or inaction, not problems caused by individuals. Indeed, the section never goes after individuals because it does not have the statutory authority to do so. In situations in which individuals are causing problems at the polls and interfering with voting rights, the section calls the local election officials to resolve it.

Federal voting laws enforced by the section only apply to state action, so the section only sues state and local governments – it does not have any enforcement power over individuals. Most often, the section enters into consent agreements with governments that focus on poll worker training, takes steps to restructure how polls are run, and deals with problems on Election Day on the spot. Doing it this way has been most effective – for example, while the section used to have the most observers in the South, with systematic changes forced upon those jurisdictions, the section now does not get complaints from the South.

The section can get involved even where there is no federal candidate on the ballot if there is a racial issue under the 14th and 15th Amendments.

When the section receives a complaint, attorneys first determine whether it is a matter that involves individual offenders or a systemic problem. When deciding what to do with the complaint, the section errs on the side of referring it criminally to avoid having any civil litigation complicate a possible criminal case.

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Recommendations

Mr. Tanner did not feel it was appropriate to make recommendations.

Note: We contend that Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. We did not have access to any information about or data from the section's election complaint intake phone logs or data or even general information from the Interactive Case Management (ICM) system-its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws. Only a selected few samples of attorney-observer reports were provided, reports that every Voting Section attorney who is observing elections at poll sites on Election Day is required to submit. Mr. Tanner would not discuss any current investigations or cases the section is involved in.

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Jeannie Layson /EAC/GOV

12/01/2006 12:41 PM

To Thomas R. Wilkey/EAC/GOV@EAC

cc

bcc

Subject Re: FOIA request 

Thank you. This is for the Brennan Center, so I want to do everything possible to meet their deadline.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov
Thomas R. Wilkey/EAC/GOV

Thomas R. Wilkey/EAC/GOV

12/01/2006 12:26 PM

To Jeannie Layson/EAC/GOV@EAC

cc

Subject Re: FOIA request 

Bert,

Go into my computer and look under the folder for eagleton and print out any items there and fed ex them to me so I can look at them

We also have some hard cover letters that were sent back and forth.

My password is



Let me know if you have a problem and Henry can reset the password

Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: Jeannie Layson

Sent: 12/01/2006 11:50 AM

To: Thomas Wilkey

Cc: Bert Benavides

Subject: FOIA request

Tom,

I know you haven't responded to my FOIA request b/c of what you've got going on, but I wanted to bring it to your attention b/c I'm pretty sure you've got some related emails. According to Karen, you and John Weingardt had email exchanges primarily after June 30. I'll need to get all of those and any letters or any other correspondence b/w the two of you. I asked for everyone to submit what they have by Monday.

Perhaps Bert can begin gathering this info. See the original request below.

030458

I need each of you to respond affirmatively or negatively to the FOIA request below. **If you have no documents in your possession related to this request , please reply to me with the words "no records."** If you have records, please identify them in an e-mail reply and attach them to the e-mail. If the document is not electronic, hand deliver them to me. Also, if you believe any of these related documents should be withheld, please provide a brief memo stating the reason for your position.

I need this information and/or a response by **COB December 5, 2006**. If you cannot comply by this date, please provide notification and an estimated time when you will provide the information and the reason why you cannot comply by the original deadline. Thanks for your cooperation. See request below:

Wendy Weiser of the Brennan Center for Justice has submitted a FOIA request for the voting fraud report prepared by our consultants and the voter ID report, as well as the following information:

"In the event that the EAC denies my renewed request for the voter ID and voting fraud reports or delays another week in providing those materials, we respectfully request copies of (1) all requests for proposals and contracts relating to the voter ID and voting fraud reports; and (2) all written and electronic communications concerning the voter ID and voting fraud reports between the EAC and (a) the Eagleton Institute of Politics, (b) the Moritz College of Law, (c) Tova Wang, (d) Job Serebrov, and (e) any other individuals or entities, including but not limited to outside reviewers."

Please let me know if you would like a copy of the FOIA request.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

030459

Jeannie Layson /EAC/GOV

11/28/2006 10:27 AM

To EAC Personnel

cc

bcc

Subject FOIA Request

Hello everyone,

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Please let me know if you would like a copy of the FOIA request.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

030460

Jeannie Layson /EAC/GOV
11/15/2006 01:22 PM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc
bcc
Subject Re: Draft fraud and intimidation report 

Here's my suggestions...



Voter Fraud & Intimidation j edits.doc
Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

030461

EAC REPORT ON VOTER FRAUD AND VOTER INTIMIDATION STUDY

INTRODUCTION

Voter fraud and intimidation is a phrase familiar to many voting-aged Americans. However, it means different things to different people. Voter fraud and intimidation is a phrase used to refer to crimes, civil rights violations, and, at times, even the correct application of state or federal laws to the voting process. Past study of this topic has been as varied as its perceived meaning. In an effort to help understand the realities of voter fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a definition of election crimes and adopted some research methodology on how to assess the existence and enforcement of election crimes in this country.

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PURPOSE AND METHODOLOGY OF THE EAC STUDY

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voter fraud and voter intimidation was a topic that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

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EAC began this study with the intention of identifying a common understanding of voter fraud and intimidation and devising a plan for a comprehensive study of these issues. This study was not intended to be a comprehensive review of existing voter fraud and voter intimidation actions, laws, or prosecutions. To conduct that type of extensive research, a basic understanding that had to first be established regarding what is commonly referred to as voter fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voter fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

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To accomplish these tasks, EAC employed two consultants, who worked with EAC staff and interns to conduct the research that forms the basis of this report. Consultants were chosen based upon their experience with the topic and to assure a bipartisan representation in this study. The consultants and EAC staff were charged (1) to research the current state of information on the topic of voter fraud and voter intimidation; (2) to develop a uniform definition of voter fraud and voter intimidation; and (3) to propose recommended strategies for researching this subject.

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EAC consultants reviewed existing studies, articles, reports and case law on voter fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

The Honorable Todd Rokita
Indiana Secretary of State
Member, EAC Standards Board and the
Executive Board of the Standards Board

Kathy Rogers
Georgia Director of Elections, Office of
the Secretary of State
Member, EAC Standards Board

J.R. Perez
Guadalupe County Elections
Administrator, Texas

Barbara Arnwine
Executive Director, Lawyers Committee
for Civil Rights under Law
Leader of Election Protection Coalition

Benjamin L. Ginsberg
Partner, Patton Boggs LLP
Counsel to national Republican
campaign committees and Republican
candidates

Robert Bauer
Chair of the Political Law Practice at the
law firm of Perkins Coie, District of
Columbia
National Counsel for Voter Protection,
Democratic National Committee

Mark (Thor) Hearne II
Partner-Member, Lathrop & Gage, St
Louis, Missouri
National Counsel to the American
Center for Voting Rights

Barry Weinberg
Former Deputy Chief and Acting Chief,
Voting Section, Civil Rights Division,
U.S. Department of Justice

Technical Advisor:

Craig Donsanto
Director, Election Crimes Branch, U.S.
Department of Justice

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consultants

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Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of existing laws, cases, studies and reports on voter fraud and intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voter fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION

To begin our study of voter fraud and voter intimidation, EAC consultants reviewed the current body of information on voter fraud and intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books.

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There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voter fraud and voter intimidation.

Reports and Studies of Voter Fraud and Intimidation

Over the years, there have been a number of studies conducted about the concepts of voter fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voter fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “__”:

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Articles and Reports

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, “The New Poll Tax,” *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.
- National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.
- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, “Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?” A Report to the Center for Voting Rights & Protection, September, 2004.

- Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.
- American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.
- The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001
- The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at http://www.democracy.ru/english/library/international/eng_1999-11.html
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.
- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.

- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.
- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

Books

- John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voter fraud and voter intimidation. None of the studies or reports was based on a comprehensive study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voter fraud or voter intimidation. Most reports focused on a limited number of case studies or instances of alleged voter fraud or intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection (is this DOJ?) program during the 2004 presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voter fraud and voter intimidation. Some reports, such as "Building Confidence in U.S. Elections," suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the "Preliminary findings of Joint Task Force Investigating Possible Election Fraud," produced by the Milwaukee Police Department, Milwaukee County District

Attorney's Office, FBI and U.S. Attorney's Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate because there is little agreement on what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, even legal practices, that allege suppression of the vote.

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One point of agreement is that absentee voting and voter registration by third-party groups create opportunities for fraud. A number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of voters of a certain party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

Interviews with Experts

In addition to reviewing prior studies and reports on voter fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voter fraud and voter intimidation. Persons interviewed included:

Wade Henderson
Executive Director,
Leadership Conference for Civil Rights

Pat Rogers
Attorney, New Mexico

Wendy Weiser
Deputy Director,
Democracy Program, The Brennan
Center

Rebecca Vigil-Giron
Secretary of State, New Mexico

William Groth
Attorney for the plaintiffs in the Indiana
voter identification litigation

Sarah Ball Johnson
Executive Director,
State Board of Elections, Kentucky

Lori Minnite
Barnard College, Columbia University

Stephen Ansolobhere
Massachusetts Institute of Technology

Neil Bradley
ACLU Voting Rights Project

Chandler Davidson
Rice University

Nina Perales
Counsel,
Mexican American Legal Defense and
Education Fund

Tracey Campbell
Author, *Deliver the Vote*

Douglas Webber
Assistant Attorney General, Indiana

Heather Dawn Thompson

Director of Government Relations,
National Congress of American Indians

Jason Torchinsky
Assistant General Counsel,
American Center for Voting Rights

Robin DeJarnette
Executive Director,
American Center for Voting Rights

Harry Van Sickle
Commissioner of Elections,
Pennsylvania

Joseph Sandler
Counsel
Democratic National Committee

John Ravitz
Executive Director
New York City Board of Elections

Sharon Priest
Former Secretary of State, Arkansas

Kevin Kennedy
Executive Director
State Board of Elections, Wisconsin

Evelyn Stratton
Justice
Supreme Court of Ohio

Tony Sirvello
Executive Director
International Association of Clerks,
Recorders, Election Officials and
Treasurers

Joseph Rich
Former Director
Voting Section, Civil Rights Division
U.S. Department of Justice

Craig Donsanto
Director, Public Integrity Section
U.S. Department of Justice

John Tanner
Director
Voting Section, Civil Rights Division
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by third-party groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it was the most likely type of fraud to be discovered and due to the stiff penalties associated with this type of fraud.

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Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws, voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

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Those interviewed also expressed opinions on the enforcement of voter fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states,

enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voter fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute crimes related to elections involving federal candidates. Those interviewed differed on the effectiveness of the current system of enforcement, including those who allege that prosecutions are not sufficiently aggressive and those who feel that the current laws are sufficient for prosecuting fraud and intimidation.

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A summary of the each of the interviews conducted is attached as Appendix “___”.

Case Law and Statutes

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voter fraud and voter intimidation. The majority of these cases came from appeal courts. This is not surprising, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

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Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem (WHY DID IT “SEEM” THIS WAY? IS THERE EVIDENCE?) that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix “___”.

Media Reports

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voter fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters,
- multiple voting,
- felons voting,
- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voter fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voter fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charge and prosecutions of voter fraud and intimidation throughout the country.

DEFINITION OF ELECTION CRIMES

From our study of available information on voter fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what constitutes “voter fraud” and “voter intimidation.” Some think of voter fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and appropriate activities. To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future.

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New Terminology

The phrase “voter fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

Fraud, n. 1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu. a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Black’s Law Dictionary, Eighth Edition, p. 685.

A “voter” is a person who is eligible to and engages in the act of voting. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voter fraud,” it means fraudulent or deceptive acts committed by the voter or in which the voter is the victim. Thus, a voter who intentionally provides false information on a voter registration application or intentionally impersonates another registered voter and attempts to vote for that person would be committing “voter fraud.” Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

The phrase “voter fraud” does not capture a myriad of other criminal acts that are related to elections which are not perpetrated by the voter and/or do not involve an act of deception. For example, “voter fraud” does not capture actions or willful inaction by candidates and election workers. When an election official willfully and knowingly refuses to register to vote a legally eligible person it is a crime. This is a crime that involves neither the voter nor an act of deception.

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To further complicate matters, the phrases “voter fraud” and “voter intimidation” are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the civil division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred to as “voter fraud” and “voter intimidation” that would serve as the basis of a future, comprehensive study of the existence of these problems. In order to meet that goal, we recognize that the current terminology does not accurately represent the spectrum of activities that we desire to study. Furthermore, we recognize that the resources, both financial and human capital, needed to study allegations and prosecutions of criminal acts, suits involving civil torts, and allegations of potential voter suppression through the use of legal election processes are well beyond the resources available to EAC. As such, EAC has defined “election crimes,” a phrase that captures all crimes related to the voter registration and voting processes.

The Definition of an Election Crime for Purposes of this Study

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Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

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Generally speaking, election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

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The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public, in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

Acts of Deception

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making, or knowingly possessing, a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate at one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;
- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a material false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

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Acts of Coercion

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;
- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or delay the process of voting;

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- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

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Acts of Damage or Destruction

- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

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Failure or Refusal to Act

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;

- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

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What is not an Election Crime for Purposes of this Study

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All crimes or civil violations related to campaign finance reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Similarly, violations of ethical provisions such as the Hatch Act are not “election crimes,” and actions that do not rise to the level of criminal activity, such as a misdemeanor, relative felony or felony, are not “election crimes.”

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RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

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Recommendation 1: Conduct More Interviews

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

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Recommendation 2: Follow Up on Media Research

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, many of the articles contained information about investigations into such activities or even charges brought. (THIS SENTENCE CONTRADICTS WHAT WAS SAID EARLIER ABOUT THE LACK OF MEDIA ARTICLES ON FOLLOW UP.) Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

Recommendation 3: Follow Up on Allegations Found in Literature Review

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a toll-free voter hotline that voters could call for poll locations, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded complaints.

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Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.

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Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice

According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety in ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and “monitor field reports” (NOT SURE WHAT THIS MEANS) from Election Day.

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Recommendation 6: Review Reports Filed By District Election Officers

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voter fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

Recommendation 7: Attend Ballot Access and Voting Integrity Symposium

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys’ Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of

the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

Recommendation 8: Conduct Statistical Research

EAC should measure voter fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- o Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- o Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

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EAC should also conduct a survey of elections officials, district attorneys, and district election officers. (WHAT WOULD WE SURVEY THEM ABOUT?) The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

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Recommendation 9: Explore Improvements to Federal Law

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

Recommendation 10: Use Observers to Collect Data on Election Day

Use observers to collect data regarding fraud and intimidation at the polls in on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation.

Recommendation 11: Study Absentee Ballot Fraud

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing fraud when absentee ballots are used.

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Recommendation 12: Use Risk Analysis Methodology to Study Fraud

Conduct an analysis of what types of fraud people are most likely to commit.

Researchers will use that risk analysis to rank the types of fraud based on the “ease of commission” (WHAT DOES THIS MEAN?) and the impact of the fraud.

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Recommendation 13: Conduct Research Using Database Comparisons

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons actually voted.

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Recommendation 14: Conduct a Study of Deceptive Practices

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

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Recommendation 16: Examine the Use of Special Election Courts

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

Accepted Recommendations

There has never been a comprehensive study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a

comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

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In order to further its goal of developing a comprehensive data set regarding election crimes, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

Survey Chief Election Officers Regarding Administrative Complaints

Likely sources of complaints concerning voting crimes are the administrative complaint processes that states were required to establish as a part of complying with HAVA. Those complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints under those procedures with the state's chief election official, and those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses will be collected.

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Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred

Several chief state election officials have developed investigation units focused on receiving, investigating, and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. These data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

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Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

Analyze Survey Data in Light of State Laws and Procedures

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

CONCLUSION

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but

Deleted: and political pundits

| also inform us of what factors impact the existence, prevention, and prosecution of election crimes.

FOR IMMEDIATE RELEASE

CONTACT: Drew Courtney or Josh Glasstetter

October 20, 2006

at 202-467-4999 / media@pfaw.org

PFAW Presses Election Assistance Commission to Release Report Debunking Myth of Voter “Fraud”

Despite requests, the Election Assistance Commission is refusing to release a report written months ago that reportedly pokes holes in the widespread myth that voter fraud is rampant in America. EAC Chairman Paul S. DeGregorio Thursday denied a request by People For the American Way Foundation (PFAWF) to make the taxpayer-funded findings available to the public in time for the November elections, now less than three weeks away. PFAWF President Ralph G. Neas said the information should be released immediately and questions whether the report is being suppressed for political reasons.

The existence of the report was revealed days ago by *USA Today*, which reported that instances in which non-eligible persons attempt to pass themselves off as voters and somehow cast fraudulent votes are exceedingly rare. PFAWF's sister advocacy organization, People For the American Way, has launched a petition drive asking the commissioners to release the report, since it will refute rampant allegations of voter fraud which have led to restrictive voting requirements.

“As we approach the elections, the last thing election officials need is to labor under the false impression that ineligible people are trying to pass themselves off as qualified voters at the polls. They should be focusing on ways to keep the path to the ballot box clear for as many eligible voters as possible, instead of looking for nonexistent fraud that will slow down the process and possibly even discourage eligible voters,” said PFAW President Ralph G. Neas. “We need to raise confidence in our elections process, not allow harmful myths to stand – especially when the government has findings available to refute them.”

Neas sent a letter on behalf of PFAW Foundation to the EAC earlier this week asking that the report be made available to the public, but on Thursday the EAC denied the request. The report was written by Tova Wang, an elections scholar at the Century Foundation think tank, and Job Serebroy, an Arkansas attorney, and has been in the hands of the EAC commissioners for more

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than four months.

Neas said the report has critical implications for election legislation around the country. During the past few years, a number of states have passed legislation to combat supposed “voter fraud” through overly restrictive identification requirements and other impediments to the ballot box. According to USA Today, the report found such voter fraud to be exceedingly rare.

“We have plenty of problems to deal with. We’ve all seen long lines, unreliable voting equipment, purges that wrongly remove eligible voters from the roll. It turns out the problem is not that bad people are trying to vote, but that too many qualified voters are discouraged from voting. This report apparently confirms what common sense has told us for years – we need to make it easier for eligible voters to cast a vote that counts, not harder,” said Neas. “Instead of fighting nonexistent fraud, these restrictive new laws will discourage voters – people like senior citizens, students and disabled voters who may not have drivers’ licenses or other forms of ID required by these new laws. That’s just wrong, and is clearly not supported by the evidence.”

Neas said the new laws are often politically motivated. The misleadingly-named right-wing group the American Center for Voting Rights has supported extremely restrictive laws by pointing to supposed voting fraud.

“Any law that disadvantages certain groups of voters – like senior citizens and students – should be suspect. If the voters are disadvantaged, which political parties and candidates stand to gain? The same question should be asked about the reason the release of this report has been delayed. Is there a political motivation?” he asked. “Has this study been buried because anti-voter activists like the American Center for Voting Rights find its conclusions inconvenient? That’s unacceptable. The Commissioners of the EAC have had this report for months, even as they have testified before Congress on critical legislation that could have been informed by the report’s findings. It’s unconscionable.”

Laws passed in several states this year raise barriers to the ballot box that would prevent poor, elderly, and minority voters from casting a ballot. PFAW’s sister organization, People For the American Way Foundation, has challenged laws in Ohio, Missouri, and Arizona; in all three, the laws were either struck down or stayed until after the November election. Yet restrictions still in effect in a number of states could harm voters. One such provision, stringent ID requirement, has been likened to a modern day poll tax.

Said Neas, "All American citizens have a vested interest in having fair and open elections. This report contains valuable information that can help us do that. The EAC should release the report immediately, no matter what the political implications may be and hold public hearings to discuss the findings."

PFAW's petition can be found at www.ReleaseTheReport.com.

Laura Strickler, Producer
CBS Evening News, Washington
Office: 202-457-1597
Blackberry: 646-460-6175
Fax: 202-457-1577
Cell : 917-499-6459
stricklerl@cbsnews.com

Margaret Sims /EAC/GOV

10/13/2006 04:18 PM

To Jeannie Layson/EAC/GOV@EAC

cc twilkey@eac.gov

bcc

Subject Research Project Descriptions

Jeannie:

Here are the changes I suggested for the Vote Count-Recount and the Voting Fraud-Voter Intimidation research projects. I don't think they will help the current situation much, as the original VF-VI description already stated that it is preliminary research. As it is preliminary research, we did not expect that it would provide a total picture of voting fraud and voter intimidation in this country. We just wanted to get some sense of what is going on, and a better idea of the direction future EAC research on the subject should take. To ensure that the research would be balanced, we had consultants and project working group members from opposing sides of the political spectrum.

According to folks intimately familiar with the development of HAVA, disputes over the extent to which voting fraud and voter intimidation existed caused Congress to add the study of these subjects to EAC's list of research projects. Given the nature of the subject (most offenders try to hide their activities, sufficient evidence is hard come by with some types of activity, and prosecution of offenses may not occur for political or budgetary reasons), it is doubtful that we will ever have completely reliable statistics on occurrences of voting fraud and voter intimidation, but we may be able to obtain better statistics than anyone else has. And we should be able to identify where in the voting process most offenses tend to occur and to explore alternatives for addressing vulnerabilities that leave the process open to corruption.
--- Peggy



Rev Descriptions for Web Site Descriptions of Vote Counts- Recounts and Voting Fraud Research 9-6-06.doc

030484

Vote Counts and Recounts

Section 241(b)(13) of HAVA allows EAC to study the laws and procedures used by each state that govern recounts of ballots cast in elections for Federal office, contests of determinations regarding whether votes are counted in such elections, and standards that define what will constitute a vote on each type of voting equipment used in the state to conduct elections for Federal office. The law also authorizes EAC to identify best practices that are used by States for recounts and contests. Consequently, in FY 2005, EAC began conducting research to develop best practices on vote count and recount laws and procedures. A major tasks associated with this research is the review of literature for methodologies used to establish best practices and developing definitions of what constitutes a best practice with respect to vote counts, recounts, and election contests. Major tasks specifically associated with the vote count research include: (1) reviewing and analyzing data collected on definitions of what constitutes a vote for each state by voting system, including processes for handling and counting ballots, provisions for observing the count, types of accounting and auditing procedures used to ensure an accurate accounting of each ballot cast, and time periods provided between unofficial election night tallies and certification of official results; (2) drafting a comprehensive report that includes the data analysis and state-by-state summary of definitions of what constitutes a vote for each voting system and the laws and procedures used to tally ballots; and (3) identifying best practices related to vote counting. Major tasks specifically associated with recount and election contest research include: (1) reviewing and analyzing states' recount and contest laws and procedures; (2) drafting a comprehensive report that includes the data analysis and the State-by-State summary of recount and contest laws and procedures; and (3) identifying best practices with respect to recounts and election contests. After conducting the research, EAC will provide election officials throughout the country with recommended best practices for vote counts, recounts, and contested elections; however, jurisdictions may not be permitted to implement these practices until their State election authority or their State legislature has determined which are appropriate to implement in the State.

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Deleted: Section 241 enumerates a number of periodic studies of election administration issues that the EAC may elect to conduct. "On such periodic basis as the Commission may determine, the Commission shall conduct and make available to the public studies regarding the election administration issues described in subsection (b)."

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Voting Fraud and Voter Intimidation

Sections 241(b)(6) and (7) allow EAC to conduct and make available to the public studies regarding nationwide statistics and methods of identifying, deterring, and investigating voting fraud in election for Federal office; and identifying, deterring, and investigating methods of voter intimidation. Building on this reference to studies of voting fraud and voting intimidation, EAC is conducting preliminary research on these issues. Activities include: (1) identifying what constitutes voting fraud and voter intimidation affecting Federal elections; (2) performing background research, including Federal and state-by-state administrative and case law review related to voting fraud and voter intimidation and a review of current voting fraud and voter intimidation activities taking place with key government agencies and civic and advocacy organizations; (3) identifying and convening a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation; and (4) writing a report summarizing the key findings, including suggestions for specific EAC activities to address these topics.



"Wolf, Richard"
<rwolf@usatoday.com>
10/12/2006 11:53 AM

To jlayson@eac.gov
cc
bcc
Subject RE: and the drama continues...

Jeannie,

I can't help what the bloggers do. And I didn't say this was some sort of cover-up by the EAC. Several people had mentioned the fraud study to me and said nothing was ever issued. I asked the chairman about that, and he told me what could be given to me was whatever had been discussed at the May meeting, nothing more. I asked for that, and you guys provided it. But it wasn't distributed publicly, right?

The bottom line from our point of view was that two consultants, from different political perspectives, had reached an interesting conclusion about fraud. We understand it isn't final, and we understand the EAC hasn't put its imprimatur on it. But we still found it newsworthy. I'm sorry if the story has been wrongly interpreted by some. It certainly was not my intention.

From: jlayson@eac.gov [mailto:jlayson@eac.gov]
Sent: Thursday, October 12, 2006 10:48 AM
To: Wolf, Richard
Subject: and the drama continues...

Rich,
I don't mean to beat a dead horse, but your article has really left the wrong impression. Go [here](#) and [here](#). Our [federal register notice](#) clearly stated that an update on our research activities was part of the agenda. And the document you have is just an update for the project, not a final or even a draft report. It's even called a STATUS report -- there is a difference b/w a preliminary report and an update. All of this was discussed at a meeting that was open to the public, but that was not mentioned in your article.

Nothing we can do now, but I really feel we got some unfair treatment here.

Jeannie Layson
U.S. Election Assistance Commission
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Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

030486

Bryan Whitener /EAC/GOV
10/11/2006 05:29 PM

To Paul DeGregorio/EAC/GOV@EAC, Donetta L.
Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.
Hodgkins/EAC/GOV@EAC, Margaret
Sims/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC
bcc
Subject AP voter fraud story posted

Report: Voter fraud may be overstated

By WILL LESTER
Associated Press Writer
Oct 11, 4:40 PM EDT
October 11, 2006

WASHINGTON (AP) — The most common form of voter fraud involves absentee ballots, including forgery and coercion in getting older or ailing voters to fill them out, according to a preliminary report to the U.S. Election Assistance Commission.

But the report, delivered in May, suggested that reports of polling place fraud involving "dead" voters and voting by felons and non-citizens might be overstated. The researchers said there is far more anecdotal evidence about voter fraud than specific verifiable claims.

"On balance, more researchers find it to be less of a problem than is commonly described in political debate," the report said.

"Many times people put their own partisan spin on voter fraud and voter intimidation," EAC Chairman Paul DeGregorio said Wednesday.

DeGregorio said the report was only preliminary and cautioned that more investigation is needed to understand the amount of voter fraud in this country.

"Many times you see people attempting to commit fraud, but it never gets to the level of being reported," said DeGregorio, a former elections official in St. Louis. He noted a case of more than 1,400 suspect voter registration cards being investigated in St. Louis.

The preliminary report was prepared by Tova Wang, an elections expert at the Century Foundation think tank and Job Serebrov, an Arkansas attorney.

Conservatives have argued the problem of voter fraud is severe in some states, while liberals generally argue that voters face too many restrictions.

New state laws requiring voters to present identification at polling places have faced legal challenges in states such as Arizona and Georgia.

"It's absolutely a serious problem," said Thor Hearne, counsel to the American Center for Voting Rights. "It's an unfortunate reality, particularly in battleground states."

Those problems include voter fraud and voter intimidation, he said.

The final voter fraud report is expected after the Nov. 7 midterm elections, DeGregorio said.

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030487

Margaret Sims /EAC/GOV
10/11/2006 02:37 PM

To Jeannie Layson/EAC/GOV@EAC
cc twilkey@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC,
bwhitener@eac.gov
bcc
Subject Re: Voting Fraud-Voter Intimidation Report

The answer is tricky. The working group met *after the written report was submitted* for the board meetings, but *before the status report was formally presented* (orally) at the board meetings. --- Peggy

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV
10/11/2006 02:27 PM

To Margaret Sims/EAC/GOV@EAC
cc
Subject Re: Voting Fraud-Voter Intimidation Report

So the answer is yes, they did meet after the status report was presented?

Jeannie Layson
U.S. Election Assistance Commission
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Phone: 202-566-3100
www.eac.gov
Margaret Sims/EAC/GOV

Margaret Sims /EAC/GOV
10/11/2006 02:26 PM

To Jeannie Layson/EAC/GOV@EAC
cc twilkey@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC,
bwhitener@eac.gov
Subject Re: Voting Fraud-Voter Intimidation Report

The status report was written on May 17, 2006 (the last day it could be submitted for the upcoming board meetings). The first and only meeting of the working group was May 18, 2006. --- Peggy

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV
10/11/2006 02:06 PM

To Margaret Sims/EAC/GOV@EAC
cc
Subject Re: Voting Fraud-Voter Intimidation Report

030486

Yes, that is what prompted my question. So the answer is no -- they have not met since May 17?

Jeannie Layson
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030489

Jeannie Layson /EAC/GOV

10/11/2006 02:21 PM

To Margaret Sims/EAC/GOV@EAC

cc

bcc

Subject Re: Voting Fraud-Voter Intimidation Report 

I agree. I've pointed out that mistake to the reporter, but the damage is done. And since we included a lot of status reports in the materials submitted to both adv. boards, we can anticipate having to do this over and over again. All of that info is public information.

Jeannie Layson

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Phone: 202-566-3100

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Margaret Sims/EAC/GOV

Margaret Sims /EAC/GOV

10/11/2006 01:45 PM

To Jeannie Layson/EAC/GOV@EAC

cc twilkey@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC,
bwhitener@eac.gov

Subject Re: Voting Fraud-Voter Intimidation Report 

I would hope that we can refer to it as a status report on the research project (prepared by EAC staff based upon information available at the time from our consultants, Tova and Job). Calling it a preliminary report has given rise to some confusion. That confusion has led to complaints from project working group members and requests from outsiders, who mistakenly think that EAC has released the document written by our consultant that fully reports on the preliminary research into voting fraud and voter intimidation and makes recommendations for future EAC action. --- Peggy


Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV

10/11/2006 12:33 PM

To Margaret Sims/EAC/GOV@EAC

cc

Subject Re: Voting Fraud-Voter Intimidation Report 

Thanks for the update. Per legal, the preliminary report is absolutely public information which is why we had to give it to the reporter when he asked for it.

Jeannie Layson

U.S. Election Assistance Commission

1225 New York Ave., NW


Suite 1100

Washington, DC 20005

030490

Phone: 202-566-3100
www.eac.gov

Jeannie Layson /EAC/GOV
10/11/2006 02:06 PM

To Margaret Sims/EAC/GOV@EAC
cc
bcc
Subject Re: Voting Fraud-Voter Intimidation Report 

Yes, that is what prompted my question. So the answer is no -- they have not met since May 17?

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030492

Margaret Sims /EAC/GOV
10/11/2006 01:57 PM

To Jeannie Layson/EAC/GOV@EAC
cc twilkey@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC,
bwhitener@eac.gov
bcc

Subject Re: Voting Fraud-Voter Intimidation Report

History: This message has been replied to.

The working group met prior to the meeting of the EAC boards, but too late for its deliberations to be summarized in the written status report on the project that was delivered to the boards. The status report notes that a meeting of the working group was about to be held to review the research so far and make recommendations. — Peggy

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV
10/11/2006 01:03 PM

To Margaret Sims/EAC/GOV@EAC
cc
Subject Re: Voting Fraud-Voter Intimidation Report

Has the working group met since the preliminary report was given to the Standards Bd?

Sent from my BlackBerry Wireless Handheld
Margaret Sims
----- Original Message -----

From: Margaret Sims
Sent: 10/11/2006 12:34 PM
To: Paul DeGregorio; Jeannie Layson; Thomas Wilkey
Cc: Amie Sherrill; Juliet Hodgkins; Bryan Whitener; Tamar Nedzar
Subject: Re: Voting Fraud-Voter Intimidation Report

Just a note to clarify that we are not releasing the preliminary report on voting fraud and voter intimidation (Tova & Job's report) because the draft report is going through EAC review. The only document we can offer at this time is the status report on the research project, which was delivered to our boards and which apparently is considered public information. The status report does not address any recommendations for future EAC action.

I am using some of my work at home time on the draft report. Hopefully, I can meet with Julie and Tamar next week. After that, we will have a better idea of when it will be ready for a Commissioner briefing. — Peggy

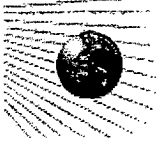
Paul DeGregorio/EAC/GOV

Paul DeGregorio /EAC/GOV
10/11/2006 10:20 AM

To Jeannie Layson/EAC/GOV@EAC
cc Amie J. Sherrill/EAC/GOV@EAC, Margaret



030493



Sims/EAC/GOV@EAC
Subject Re: Interview Request

Find a time that works. There's a story in today's St Louis PD that points to over 1000 suspect voter registrations.

Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: Jeannie Layson
Sent: 10/11/2006 10:15 AM
To: Paul DeGregorio
Cc: Amie Sherrill; Margaret Sims
Subject: Interview Request

Mr. Chairman,

Will Lester of the Associated Press wants to interview you briefly via phone about the preliminary fraud report. I recommend you accomodate him, as he has dutifully covered EAC, and plans to include us in a story next week about the election lanscape. He has requested a copy of the preliminary report, which I am sending to him. He only needs a few minutes, and as we discussed, i think the message is that these are preliminary findings that we presented to our advisory boards to get their input. When the final report is complete, we will release it. You can also use some of the talking pts from your speech, such as the challenge related to the very definition of the term "fraud," as people define it differently. How about I set it up for noon?

The only question he asked that I don't know the answer to is when we expect the final report. Peg... please weigh in on this.

Jeannie Layson
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Phone: 202-566-3100
www.eac.gov

030494

Margaret Sims /EAC/GOV

10/11/2006 12:34 PM

To Paul DeGregorio/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, twilkey@eac.gov
cc Amie J. Sherrill/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Bryan Whitener/EAC/GOV@EAC, Tamar Nedzar/EAC/GOV@EAC
bcc

Subject Re: Voting Fraud-Voter Intimidation Report

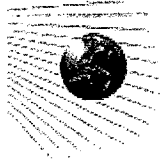
History:

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Peggy

Paul DeGregorio/EAC/GOV



Paul DeGregorio /EAC/GOV

10/11/2006 10:20 AM

To Jeannie Layson/EAC/GOV@EAC
cc Amie J. Sherrill/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC
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030495

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Margaret Sims /EAC/GOV
10/11/2006 12:31 PM

To Paul DeGregorio/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, twilkey@eac.gov
cc Amie J. Sherrill/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, bwhitener@eac.gov
bcc

Subject Re: Voting Fraud-Voter Intimidation Report

History

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Peggy

Paul DeGregorio/EAC/GOV



Paul DeGregorio /EAC/GOV
10/11/2006 10:20 AM

To Jeannie Layson/EAC/GOV@EAC
cc Amie J. Sherrill/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC
Subject Re: Interview Request

Find a time that works. There's a story in today's St Louis PD that points to over 1000 suspect voter registrations.

Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: Jeannie Layson
Sent: 10/11/2006 10:15 AM
To: Paul DeGregorio
Cc: Amie Sherrill; Margaret Sims
Subject: Interview Request

Mr. Chairman,
Will Lester of the Associated Press wants to interview you briefly via phone about the preliminary fraud report. I recommend you accomodate him, as he has dutifully covered EAC, and plans to include us in a story next week about the election lanscape. He has requested a copy of the preliminary report, which I am sending to him. He only needs a few minutes, and as we discussed, i think the message is that these

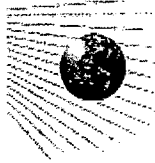
030497

are preliminary findings that we presented to our advisory boards to get their input. When the final report is complete, we will release it. You can also use some of the talking pts from your speech, such as the challenge related to the very definition of the term "fraud," as people define it differently. How about I set it up for noon?

The only question he asked that I don't know the answer to is when we expect the final report. Peg... please weigh in on this.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

030498



Paul DeGregorio /EAC/GOV

10/11/2006 10:20 AM

To Jeannie Layson/EAC/GOV@EAC

cc Amie J. Sherrill/EAC/GOV@EAC, Margaret
Sims/EAC/GOV@EAC

bcc

Subject Re: Interview Request

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Sent: 10/11/2006 10:15 AM

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Cc: Amie Sherrill; Margaret Sims

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www.eac.gov

030499

Jeannie Layson /EAC/GOV

10/11/2006 10:17 AM

To Bryan Whitener/EAC/GOV@EAC

cc

bcc

Subject Re: Fw: draft text for USA Today

Why are you sending me all of this stuff?

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov
Bryan Whitener/EAC/GOV

Bryan Whitener /EAC/GOV

10/11/2006 10:16 AM

To Jeannie Layson/EAC/GOV@EAC

cc

Subject Fw: draft text for USA Today

----- Forwarded by Bryan Whitener/EAC/GOV on 10/11/2006 10:17 AM -----

Gracia Hillman /EAC/GOV

09/27/2006 08:54 PM



To Bryan Whitener/EAC/GOV@EAC, Paul
DeGregorio/EAC/GOV@EAC, Donetta L.
Davidson/EAC/GOV@EAC

cc Juliet E. Hodgkins/EAC/GOV@EAC, Thomas R.
Wilkey/EAC/GOV@EAC

Subject Re: draft text for USA Today

Sorry for delayed response. It is fine with me.

Sent from my BlackBerry Wireless Handheld

Bryan Whitener

----- Original Message -----

From: Bryan Whitener

Sent: 09/27/2006 04:39 PM

To: Paul DeGregorio; Donetta Davidson; Gracia Hillman

Cc: Juliet Hodgkins; Thomas Wilkey

Subject: draft text for USA Today

Commissioners,

As you requested, I provided Tom and Julie a draft response to USA Today to accompany the docs requested by Richard Wolf. Julie revised it as follows and Tom agrees. Please let me know ASAP if you concur.

030500

Rich,

As we discussed, here are the docs you asked about that were presented at the board meetings in May and links to the meeting agenda. There are two reports: (1) a draft report produced by Eagleton Institute concerning provisional voting; and (2) a status report produced by EAC contractors regarding research being conducted on voter fraud and intimidation. The reports were presented by the contractors to the Standards Board and Board of Advisors for their input. This type of input is required for any guidance issued by EAC and is desired for any product that we provide to the election community and the public. Based on the input that was received from these boards, particularly regarding the questionable information contained in Eagleton's provisional voting report, EAC has not issued the Eagleton draft report as a final EAC document. As for the voter fraud and intimidation status report, it is merely an update on the status of the research conducted by the EAC contractors. A report and recommendations on future actions regarding this topic will be produced after EAC review of the preliminary research.

###

Jeannie Layson /EAC/GOV

10/11/2006 10:15 AM

To pdegregorio@eac.gov

cc asherrill@eac.gov, psims@eac.gov

bcc

Subject Interview Request

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Suite 1100
Washington, DC 20005
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www.eac.gov

030502



Paul DeGregorio /EAC/GOV
09/28/2006 11:29 PM

To Juliet E. Thompson/EAC/GOV, Jeannie Layson/EAC/GOV
cc
bcc
Subject latest version

The version of my speech I sent earlier was not the latest one. The correct one is attached. Sorry.



Speech on Fraud intimidation Sept 29 06 Salt Lake City.doc
Paul DeGregorio
Chairman
US Election Assistance Commission
1225 New York Ave, NW
Suite 1100
Washington, DC 20005
1-866-747-1471 toll-free
202-566-3100
202-566-3127 (FAX)
pdegregorio@eac.gov
www.eac.gov

030503

**Remarks by Paul DeGregorio
Chairman, US Election Assistance Commission
Voter Fraud/Intimidation Conference – Salt Lake City, Utah
Center for Public Policy & Administration
September 29, 2006**

Good afternoon, ladies and gentlemen. My name is Paul DeGregorio and I am the Chairman of the U.S. Election Assistance Commission. I would like to extend my thanks to Michael Alvarez, Thad Hall and Susan Hyde for organizing this conference and for inviting me to speak with you this afternoon.

My remarks today will focus on Voter Fraud and Voter Intimidation and how HAVA and the EAC address these issues.

The subject of voter fraud and voter intimidation can be a highly contentious issue. Since the 2004 election there has been a lot of discourse and writing about what constitutes election fraud and voter intimidation and how prevalent each may be in our society. While there are no clear numbers on the incidents of voter fraud and voter intimidation, what is clear is that the many groups are concerned about both issues and it is imperative that we continue to study and address them.

As you know, the EAC was created by The Help America Vote Act or "HAVA". HAVA represents the first major piece of federal legislation on national election reforms. Among other provisions, Section 241 of HAVA requires the EAC to conduct research on election administration issues. Among the tasks the EAC is to execute is the development of nationwide statistics and

methods of identifying, deterring, and investigating voting fraud and voter intimidation in elections for Federal office.

In September of 2005 the Commission hired consultants to begin a study of voting fraud and voter intimidation. This research project is charged with the development of a clear definition of what constitutes voting fraud and voter intimidation in Federal elections; identifying current activities of key government agencies, civic advocacy groups, and other organizations regarding these topics; the establishment of a working group of experts to discuss these issues; and production of a report to the EAC summarizing the findings that includes recommendations for future research if any. Our staff is reviewing the report that was submitted to the EAC last month and we expect to share our findings in the near future.

The lack of any solid statistics regarding voter fraud and intimidation can be attributed to two major factors. First is because there is wide disagreement about the definitions for the terms "fraud" and "intimidation." Some only consider it fraud if it falls under the criminal definitions of fraud. While others consider any form of an ineligible voter attempting to vote as fraud. I have even had it suggested to me that election officials who allow voters to cast ballots on touch screen machines without a voter-verified paper trail is election fraud. If that's the case, then we have a whole lot of fraud occurring out there.

The term intimidation is also wrought with ambiguity. Some only consider it intimidation if there is a physical or mental advantage of one party over the other, while others consider any difficulty in

the voting process as being intimidation. Because of these definitional differences there has been no clear way to study the amount of fraud or intimidation because everyone is using a different definition to help shape the statistics.

Also skewing the statistics about election fraud and voter intimidation is the political agenda or bias from both sides that accompanies much of the literature about the topic. Oftentimes we see fiery rhetoric on this issue that appears to me to want to “scare” people into voting or not voting. As a result of this political bias and the ambiguity that accompanies the terms “fraud” and “intimidation,” it is difficult to know when something has risen to the level to be considered fraud or simply is an accusation with no backing.

HAVA has several provisions that not only help to combat fraud but also make voting easier. Most notably section 303 of HAVA which requires each state to create “... a single, uniform, official, centralized, interactive, computerized statewide voter registration list...” This database is to be maintained at the state level and is to contain the name and registration information of every legally registered voter in the State.

The Statewide voter registration database is to serve as the single system for storing and managing the official list of registered voters throughout the state. It will be coordinated with other agencies databases within the state in order to insure the residence status of the voter.

The Statewide Voter Database serves a very important and specific function. It helps to prevent opportunities for fraud by allowing state election officials to check their registration information against the databases of other agencies in order to insure the status of the voters. Under HAVA, state election officials are given the right to remove those names that have been checked against state agency death records. Used correctly and efficiently, this would clearly help eliminate the problem of the use of a deceased person's name to vote or allow authorities to go after those who sign a dead person's name in the initiative or candidate petition process.

Also in section 303 of HAVA, State election officials are required to regularly update the registration list, removing only those individuals who are ineligible to vote in that election while updating the status of those eligible to vote. It is in this way that HAVA is helping to eliminate opportunities for fraud by eliminating ineligible voters from registration lists, while easing the process for those voters who are eligible.

One issue that has become particularly contentious is the issue of voter identification to combat voter fraud. As many of you know voter identification laws have lead to suits in Georgia, Indiana, Missouri, Ohio and Arizona with more to follow as states pass more identification laws.

In 2005-2006 the EAC commissioned research on voter identification practices in the 2004 election. To the surprise of no one the study found a lot of disagreement regarding the need for

voter identification laws and the way these laws should be applied.

Those in favor of voter identification laws argue that their goal is to ensure that only those legally entitled to vote do so, and do so only once at each election. They propose stricter voter identification requirements to prevent one form of voter fraud -- that being multiple voting or voting by those who are not eligible.

However, opponents argue that stricter ID laws interfere with legitimate voter's access to the ballot. They fear that some voters may lack convenient access to the required ID documents. Both sides assert that their policy will engender faith in the electoral process among citizens.

At the heart of this entire debate is the balance that needs to be struck between allowing those who are eligible to vote the ability to vote while preventing those who are not eligible to vote from voting.

From my own personal experience in traveling the world to improve the election process, especially in emerging democracies in Eastern Europe, Africa and Asia, I witnessed little, if any, resistance to ID requirements, including photo ID requirements. Indeed, I believe the Carter-Baker Commission has cited this phenomenon in their recommendations on this issue. In the recent Presidential election in Haiti, which is the poorest country in the Western Hemisphere, voters were required to show a photo ID to cast ballots. Statistics provided by IFES showed that over 3 million Haitian citizens, or about 80% of the voting age population,

registered to vote at centers that took their picture and fingerprints, and that produced the ID they used on Election Day. These IDs were paid for by the Organization of American States. On Election Day, 60% of the registered Haitians went to the polls, used their IDs, and cast ballots in the presidential election. By the way the 60% turnout matched the 2004 turnout in the US presidential election.

I cite this example and the Carter-Baker study to suggest that the first step that should be taken in order to find this balance is that more research needs to be conducted on the issue of voter identification. As was noted by the EAC's research, the amount of evidence available on how voter identification laws impacted both voter turnout and voter fraud is limited, at best. As more and more states implement these laws more information needs to be gathered in order to discover if these laws are preventing fraud, and what their impact is on voter turnout.

Courts have also greatly disagreed on the impact of voter identification laws. A recent decision in Georgia granted a preliminary injunction to enjoin the State of Georgia from requiring photo identification to be able to cast a ballot in person. The court in reaching its decision concluded that the injury to a voter who couldn't get the proper identification in time to vote was great and could not be tolerated. The court did point out that a State has a legitimate and important interest in attempting to combat voter fraud and in turn ensure the integrity of its elections.

This case is a perfect example of the struggle that legislatures, election officials, and courts are having with the issue of voter

fraud and voter identification. Most, if not all, recognize voter fraud as something that compromises the integrity of elections, but to what level are we willing to burden the legitimate voter to prevent this fraud from occurring?

Voter intimidation also has little valuable statistical information available. Again this is because "voter intimidation" is difficult to define and has rarely been prosecuted.

Many of the accusations of voter intimidation are brought against poll workers, most of whom are unaware of the possible intimidation taking place. For instance many of the accusations of intimidation by poll workers stem from poll workers making improper demands for identification, or poll workers questioning voters in what is a manner perceived as aggressive or intimidating. The solution to this problem is simple, proper poll worker training. Through proper training poll workers will know when and how ID or other verification documents are to be presented and the proper way to question voters at the polls. Also revisions to challenger laws can bring about more clarity about appropriate challenges and therefore less accusations of voter intimidation.

As more statistics are kept and the form and frequency of voter intimidation is better understood, states will be better prepared to prevent instances of voter intimidation and further improve the integrity of their elections. The EAC will continue work in this area so that we can hopefully see less rhetoric and more voter participation and trust in our elections.

Since I will be leaving the EAC in the not-too-distant future, I would like to take a few minutes to discuss the immense accomplishments of the EAC since I became a commissioner in December of 2003:

First, we distributed the 3 billion dollars that Congress appropriated to the states to improve their voting equipment and processes. This was truly an historic event in the field of American election administration.

Also, the EAC delivered the HAVA-mandated voluntary voting system guidelines (VMSG) within proscribed the 9-month deadline. As we develop future versions of the guidelines, we will be looking into the use of new technology and devices, as well as new software that is being created for current voting systems. Next Monday we will publish in the Federal Register the draft of our new Voting System Certification Program that we expect to finalize in December. I think you will find that this program will be a lot more rigorous and transparent than anything we have ever seen before. I encourage you to review it and give us your comments.

During the past 33 months we have issued guidance to states on statewide databases, accessibility requirements and how to use HAVA funds. And our new Inspector General and his staff are working vigorously to audit and account for the funds we distributed. On a daily basis we answer questions and offer guidance for election officials throughout the USA and indeed from all over the world.

In order to further support local election officials in this crucial election year we have released quick start guides on new voting systems, voting system security and testing, and poll worker recruitment and training. These guides provide a snapshot of processes and procedures for local election administrators to use when implementing new voting systems and security and testing older ones. It includes tips on receiving and testing equipment, poll worker training, security issues, and Election Day operations. In 2007, as part of our Clearinghouse responsibilities, we plan to distribute more comprehensive and detailed guides on these same important subjects.

In addition to the research projects that we have begun regarding election fraud and intimidation, we have several other research and data collection projects underway that will provide election officials and the public with valuable data to be used to improve the integrity of our elections. Already underway are studies on a number of topics including effective designs for ballots, polling places and websites; best practices for poll worker training, recruitment and retention, a study on vote count and recount procedures and the 2006 Election Day survey.

The HAVA College Poll Worker Program has awarded a total of almost \$1 Million in grants to help recruit a new generation of poll workers. Research is underway to find the best methods to recruit train and retain college poll workers.

We are also working hard to make sure the public is kept up to date on the future of elections and how it will affect the voting process. During tenure as Chairman we have held six public

meetings throughout the country. The topics that we have covered in these meetings include: How voting systems are certified, The National Voter Registration Act, Vote Count and Recount Procedures, Poll Workers, Effective management guidelines for voting systems, effective ballot and polling place designs, better ways to serve military and other overseas voters, voter information websites, and the EAC voting system certification program. As you can see, with a staff of just 23 people--and that number includes the Commissioners--we have accomplished a great deal in our short period of existence.

Twenty one years ago, I was probably the only one in this room who was heavily engaged as a professional election administrator. I have seen a lot of change since that time and no more so than in the past 5 years. Since the passage of HAVA, the nation has experienced significant changes in the electoral process. New voting systems have been purchased, replacing the antiquated systems that had been in place for decades. New statewide databases are in place. No one should be turned away at the polls anymore as provisional voting is the law of the land. Disabled voters, elderly voters and voter with language barriers have new tools that make it easier for them to cast their ballot.

Is America better off for all this change? You bet we are. Is the system perfect and free from errors, flaws, fraud and intimation? Certainly not.

On November 7th, can voters have full trust and confidence in the election results that come out of all of these new devices, laws and procedures? In my view, they certainly can.

It's been an honor for me to have served at this historic time on this small but remarkable federal agency that touches the lives of every American. During my time on the commission, I have come to know many of you and of your deep conviction to help American improve and strengthen our system of democracy. And I want to thank you for your work and for the strong support you have given me and the commission since our start a mere 3 years ago.

You may know that during the 10 years preceding my appointment to the EAC, I worked as hard as I could to improve the election process in many emerging democracies throughout the globe. Whether it was in Congo or Cambodia, Russia or Romania, Slovakia or Sierra Leone, those 10 years were truly a wonderful opportunity that allowed me to touch the hearts and minds of many peoples, and experience firsthand the many similarities and few differences we actually have among each other in this world. I will be forever grateful to President George W. Bush for giving me the opportunity to do and experience the exact same thing in the United States of America while on the EAC. Thank you.



Paul DeGregorio /EAC/GOV

09/28/2006 11:53 AM

To: Jeannie Layson/EAC/GOV@EAC

cc

bcc

Subject: Re: FYI [icon]

I am leaving shortly to fly to Salt Lake City to give a speech tomorrow to a conference on vote fraud and intimidation sponsored by Thad Hall. It should be on the calendar that Bryan provides. I am also giving a speech next Thursday at a conference on voter ID and registration at MIT in Boston. Ron Rivest is the host.

Paul DeGregorio
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pdegregorio@eac.gov
www.eac.gov

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV

09/28/2006 11:35 AM

To: Paul DeGregorio/EAC/GOV@EAC

cc

Subject: Re: FYI [icon]

Thanks for the intel. I often refer reporters to her to get the real world perspective. I'll let you know when I hear back from Hardball. Are you in St. Louis tomorrow?

Sent from my BlackBerry Wireless Handheld

Paul DeGregorio

----- Original Message -----

From: Paul DeGregorio
Sent: 09/28/2006 11:32 AM
To: Jeannie Layson
Subject: FYI

Jeannie,

I sat next to SoS Markowitz at today's hearing and peered down at her schedule for yesterday and today. She did interviews with the Wall Street Journal, NBC/CNBC and CNN while in DC yesterday and today. Apparently her staff had set up these interviews so that she could talk to the media about issues relating to voting systems and the upcoming election.

030515

Paul DeGregorio
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Bryan Whitener /EAC/GOV
09/27/2006 01:47 PM

To Margaret Sims/EAC/GOV@EAC, Karen
Lynn-Dyson/EAC/GOV@EAC, Thomas R.
Wilkey/EAC/GOV@EAC, Juliet E.
cc Jeannie Layson/EAC/GOV@EAC
bcc
Subject Response to USA Today request

All,

Richard Wolf of USA Today called again today. I told him I would send him the documents made public at the advisory board meeting in May. I'm sending the following items from the notebook given to board members: Tab 11 on Provisional Voting and Tab 13 on Voter Fraud.

Bryan

—— Forwarded by Bryan Whitener/EAC/GOV on 09/27/2006 01:43 PM ——

Bryan Whitener /EAC/GOV
09/22/2006 05:10 PM

To Margaret Sims/EAC/GOV, Karen Lynn-Dyson/EAC/GOV,
Thomas R. Wilkey/EAC/GOV, Juliet E. Hodgkins/EAC/GOV,
Gavin S. Gilmour/EAC/GOV
cc Jeannie Layson/EAC/GOV@EAC
Subject Media request - USA Today

All

Richard Wolf of USA Today called and asked for the following. Jeannie and I ask that you consider this carefully and let us know ASAP what to provide .

(1) The status report on voter fraud and consultant update that was presented to the advisory boards in May, 2006.

(2) The status of the required guidance document on provisional voting and voter ID that is referenced in the following passage in today's Electionline Weekly by Doug Chapin.

In addition to the EAC's considerable election management responsibilities (especially in the area of voting equipment certification and testing), the agency has key policy issues to resolve in the immediate to near-term future, including a required guidance document on provisional voting and voter ID (now nearly two years overdue) and continued regulatory oversight over state implementation of "motor voter". This latter issue will almost certainly involve questions about the intersection of state and federal laws on voter registration - questions which divided the Commission when applied to Arizona, and could divide it again as Republicans and Democrats continue their traditional struggle to balance access to the franchise with concerns about the potential for fraud at the polls.

Thanks,
Bryan

030517

Jeannie Layson /EAC/GOV

09/22/2006 06:07 PM

To Thomas R. Wilkey/EAC/GOV@EAC, Karen
Lynn-Dyson/EAC/GOV@EAC, Gavin S.
Gilmour/EAC/GOV@EAC

cc Bryan Whitener/EAC/GOV@EAC, "Jeannie Layson"
<jlayson@eac.gov>, Juliet E. Hodgkins/EAC/GOV@EAC,
Margaret Sims/EAC/GOV@EAC

bcc

Subject Re: Media request - USA Today

Regardless of the status, whatever we gave to the Standards Bd in that notebook is public record.

Sent from my BlackBerry Wireless Handheld

Thomas R. Wilkey

----- Original Message -----

From: Thomas R. Wilkey

Sent: 09/22/2006 06:05 PM

To: Karen Lynn-Dyson; Gavin Gilmour

Cc: Bryan Whitener; Jeannie Layson; Juliet Hodgkins; Margaret Sims

Subject: Re: Media request - USA Today

I believe we are waiting for the Commission to agree on where we go from here.

Sent from my BlackBerry Wireless Handheld

Karen Lynn-Dyson

----- Original Message -----

From: Karen Lynn-Dyson

Sent: 09/22/2006 06:03 PM

To: Gavin Gilmour

Cc: Bryan Whitener; Jeannie Layson; Juliet Hodgkins; Margaret Sims;

Thomas Wilkey

Subject: Re: Media request - USA Today

Indeed, my understanding is the same as Gavin's (re: creating or providing guidance).

At this point, I am awaiting instruction from Tom as to how, if at all, he wishes to proceed with creating some type of EAC report out of the research which was provided to the EAC on the topics of voter identification and provisional voting.

K

Karen Lynn-Dyson

Research Director

U.S. Election Assistance Commission

1225 New York Avenue, NW Suite 1100

Washington, DC 20005

tel:202-566-3123

Gavin S. Gilmour/EAC/GOV

Gavin S. Gilmour/EAC/GOV

09/22/2006 05:18 PM

To Bryan Whitener/EAC/GOV@EAC, Margaret
Sims/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC,
Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.

030518

Hodgkins/EAC/GOV@EAC
cc Jeannie Layson/EAC/GOV@EAC
Subject Re: Media request - USA Today

I do not have any knowledge with regard to the status of the Above, however, I would note (with respect to the provisional voting issue) the study that Karen is marshaling was not expected to create the "required". "Guidance" reference below. This requires publication, comment, etc (like the VVSG). Karen can correct me if I am wrong.

Sent from my BlackBerry Wireless Handheld
Bryan Whitener
----- Original Message -----

From: Bryan Whitener
Sent: 09/22/2006 05:10 PM
To: Margaret Sims; Karen Lynn-Dyson; Thomas Wilkey; Juliet Hodgkins; Gavin Gilmour
Cc: Jeannie Layson
Subject: Media request - USA Today

All

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Thanks,
Bryan

030519

Bryan Whitener /EAC/GOV

09/22/2006 05:10 PM

To Margaret Sims/EAC/GOV@EAC, Karen
Lynn-Dyson/EAC/GOV@EAC, Thomas R.
Wilkey/EAC/GOV@EAC, Juliet E.
cc Jeannie Layson/EAC/GOV@EAC

bcc

Subject Media request - USA Today

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Thanks,
Bryan

030520

Jeannie Layson /EAC/GOV

06/27/2006 04:36 PM

To smichels@usnews.com

cc

bcc

Subject your inquiry

Mr. Michels,

Responses to your questions are below. Please call me directly if I can be of further assistance.
202-566-3103.

1. When will EAC receive the preliminary report on voter intimidation and voting fraud?

We anticipate that we will have a draft final report from our consultants in 2-3 weeks, after our consultants have had time to review the transcript from the project Working Group meeting, which was not available until last week. This transcript will provide the comments made during the Working Group meeting.

2. When we receive the preliminary report, what is the EAC process to formulate a final product that will be made public?

First, Commissioners and EAC staff will review the preliminary draft. Then a draft will be submitted to the EAC Standards Board and EAC Advisory Board for review and comment. This second step is taken in accordance with the Help America Vote Act (HAVA) §247, which requires EAC to carry out its duties under Title II, Subtitle C (Studies and Other Activities to Promote Effective Administration of Federal Elections) in consultation with the Standards Board and the Board of Advisors.

3. When will we make this research available to the public? What form will it be in?

The final report cannot be made public until it has been accepted by the Commissioners. Normally, this does not happen until the researcher(s) submit a final report that has been revised to address clarifications and corrections deemed necessary through the review process described above. The time it takes for the researchers to produce this final report will depend, somewhat, on the number of clarifications and corrections deemed necessary.

As the researchers were charged with conducting preliminary background research on voting fraud and voter intimidation in the U.S., this report will not include recommended best practices. It will summarize the preliminary research as well as the deliberations of our project Working Group. It also will include recommendations for future EAC activity related to the development of: (1) methods of identifying, deterring, and investigating voting fraud and voter intimidation; and (2) nationwide statistics on voting fraud.

Please note that EAC initiated this preliminary research on voting fraud and voter intimidation in accordance with HAVA §241, which requires EAC to conduct research on election administration issues, including the development of:

- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [§241(b)(6)]; and
- ways of identifying, deterring, and investigating methods of voter intimidation [§241(b)(7)].

At its 2005 meeting, EAC's Board of Advisors recommended that the agency make research on these matters a high priority.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

030521

Margaret Sims /EAC/GOV
06/27/2006 04:05 PM

To Jeannie Layson/EAC/GOV@EAC
cc
bcc
Subject Re: US News & World Report inquiry

History:

This message has been replied to

Jeannie:

Here are my responses:

1. When will EAC receive the preliminary report on voter intimidation and voting fraud?

I anticipate that we will have a draft final report from our consultants in 2-3 weeks, after our consultants have had time to review the transcript from the project Working Group meeting, which was not available until last week.

2. When we receive the preliminary report, what is the EAC process to formulate a final product that will be made public?

First, Commissioners and Commission staff will have to review the preliminary draft. Then a draft will be submitted to the EAC Standards Board and EAC Advisory Board for review and comment. This second step is taken in accordance with HAVA §247, which requires EAC to carry out its duties under Title II, Subtitle C (Studies and Other Activities to Promote Effective Administration of Federal Elections) in consultation with the Standards Board and the Board of Advisors.

3. When will we make this research available to the public? What form will it be in? (Best practices, etc.)

The final report cannot be made public until it has been accepted by the Commissioners. Normally, this does not happen until the researcher(s) submit a final report that has been revised to address clarifications and corrections deemed necessary through the review process described above. The time it takes for the researchers to produce this final report will depend, somewhat, on the number of clarifications and corrections deemed necessary.

As the researchers were charged with conducting preliminary background research on voting fraud and voter intimidation in the U.S., this report will not include recommended best practices. It will summarize the preliminary research as well as the deliberations of our project Working Group. It also will include recommendations for future EAC activity related to the development of: (1) methods of identifying, deterring, and investigating voting fraud and voter intimidation; and (2) nationwide statistics on voting fraud.

If the reporter has spoken to Secretary Rokita, who maintains that EAC has no authority to conduct this research, you may want to note that EAC initiated this preliminary research on voting fraud and voter intimidation in accordance with the Help America Vote Act, (HAVA) §241, which requires EAC to conduct research on election administration issues, including the development of:

- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [§241(b)(6)]; and
- ways of identifying, deterring, and investigating methods of voter intimidation [§241(b)(7)].

At its 2005 meeting, EAC's Board of Advisors recommended that the agency make research on these matters a high priority.

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

Jeannie Layson/EAC/GOV

030522

Jeannie Layson/EAC/GOV

06/27/2006 02:26 PM

To psims@eac.gov, twilkey@eac.gov

cc

Subject US News & World Report inquiry

Please provide answers to the following questions, posed to me by US News & World Report's Scott Michels. I need this info by the end of the day to meet his deadline.

1. When will EAC receive the preliminary report on voter intimidation and voting fraud?
2. When we receive the preliminary report, what is the EAC process to formulate a final product that will be made public?
3. When will we make this research available to the public? What form will it be in? (Best practices, etc.)

Jeannie Layson
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Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

030523

Margaret Sims/EAC/GOV

06/27/2006 12:12 PM

To Jeannie Layson/EAC/GOV@EAC

cc twilkey@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC

bcc

Subject U.S. News & World Report

History:

✉ This message has been replied to

Jeannie

We suspect that someone from the Voting Fraud-Voter Intimidation Project Working Group has been talking to reporters, tipping them off about what we are finding in our preliminary study, and referring them to our consultants (although the information could have come from anyone on the EAC boards, too). Apparently, the U.S. News & World Report reporter who contacted me also contacted both consultants working on the project.

Based on my recommendation, Tova Wang and, possibly, Job Serebrov, who are on EAC personal services contracts for our voting fraud and voter intimidation research, will seek further clarification from you about what they can and cannot say to reporters and in public fora about vote fraud and voter intimidation and about EAC's research. I have previously advised Tova and Job not to discuss the work they are doing for us as this is EAC research, the Commissioners have not yet received and accepted the final report, and the Commission has not approved their speaking about the EAC research.

Tova plans to call you tomorrow (Tuesday, June 27) about the issue. In addition to the reporter's inquiry, she has been invited to speak on the subject at the summer conference of the National Association of State Legislatures. She has plenty of knowledge of the subject in her own right (apart from our study), but is having trouble differentiating between her own work and the work she is doing for us. Please, just let me know what you advise her to do.

--- Peggy

030524


Margaret Sims /EAC/GOV
06/26/2006 05:27 PM

To Jeannie Layson/EAC/GOV@EAC
cc
bcc
Subject US News Inquiry

I found a voice mail message today (but I don't know when it came in) from Scott Michaels of U.S. News & World Report. He wanted to talk about vote fraud. His phone number is 202-955-2006. If you need to talk with me about this tomorrow, I will be in the office in the afternoon. (In the morning, I have to make up hours for my COTR training.) --- Peggy

030525

Jeannie Layson /EAC/GOV
06/13/2006 03:54 PM

To "Mixon, Denise"
<Denise.Mixon@mail.house.gov>@GSAEXTERNAL
cc
bcc
Subject RE: New Information 

Denise,

Per our conversation, EAC is conducting several activities regarding voting fraud and voter intimidation through our research mandate and the guidance we issued regarding the implementation of the statewide voter registration lists (will cut down on fraud; produce cleaner voter rolls). Please let me know if you have questions or if you need more info. Also, I'd be glad to help if you already written something, and you just need help filling in the specifics or making the connection b/w the two activities below. My direct number is 202-566-3103.

STATEWIDE VOTER REG. LISTS

HAVA mandates that every state have a statewide voter registration list in place by Jan. 1, 2006. In July 2005, the EAC issued its first set of voluntary guidance to assist states in developing their statewide voter registration databases. This important requirement – designed with the dual goal of improving accuracy of voting lists while also reducing the possibility of fraud – has been a particularly difficult requirement for many states to implement. Some states, such as Michigan and Kentucky, have served as national models for such a system. And yet, most states had no such systems in place when HAVA was passed, so the EAC has worked diligently by seeking broad public input to provide interpretive guidance, as well as technical assistance to states through an on-going partnership we have established with the National Academies of Science. EAC plans to issue future guidance on interoperability, security, matching protocols and information sharing related to these statewide databases.

VOTING FRAUD AND VOTER INTIMIDATION RESEARCH


Section 241 enumerates a number of periodic studies of election administration issues that the EAC may elect to conduct. "On such periodic basis as the Commission may determine, the Commission shall conduct and make available to the public studies regarding the election administration issues described in subsection (b)." Sections 241(b)(6) and (7) list the following election administration issues: nationwide statistics and methods of identifying, deterring, and investigating voting fraud in election for Federal office; and identifying, deterring, and investigating methods of voter intimidation. Building on this reference to studies of voting fraud and voting intimidation, EAC is conducting preliminary research on these issues. Activities include: (1) identify what constitutes voting fraud and voter intimidation affecting Federal elections; (2) perform background research,

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including Federal and state-by-state administrative and case law review related to voting fraud and voter intimidation and a review of current voting fraud and voter intimidation activities taking place with key government agencies and civic and advocacy organizations; (3) identify and convene a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation; and (4) write a report summarizing the key findings, including suggestions for specific activities to address these topics.

EAC's efforts Jeannie Layson
U.S. Election Assistance Commission
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Margaret Sims /EAC/GOV
05/24/2006 03:17 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc Jeannie Layson/EAC/GOV@EAC, bwhitener@eac.gov
bcc
Subject Re: press interview 

Thanks for the "heads up". --- Peggy

"Tova Wang" <wang@tcf.org>



"Tova Wang"
<wang@tcf.org>
05/24/2006 02:52 PM

To psims@eac.gov
cc
Subject press interview

Hi Peg,

Just wanted to give you the heads up that I did an interview with a reporter from The Hill today on fraud. As far as I know he is simply referring to me as a fellow at TCF and I did not discuss the project in any way

Tova Andrea Wang
Democracy Fellow
The Century Foundation
41 East 70th Street - New York, NY 10021
phone: 212-452-7704 fax: 212-535-7534

Visit our Web site, www.tcf.org, for the latest news, analysis, opinions, and events.

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030526

Margaret Sims /EAC/GOV
05/04/2006 02:23 PM

To Jeannie Layson/EAC/GOV@EAC
cc bwhitener@eac.gov
bcc
Subject Fw: Voting Fraud-Voter Intimidation Working Group Meeting

Oops! I forgot to cc. you on this. --- Peggy

— Forwarded by Margaret Sims/EAC/GOV on 05/04/2006 02:23 PM —

Margaret Sims /EAC/GOV
05/04/2006 02:07 PM

To Paul DeGregorio, Ray Martinez, Donetta Davidson, Gracia Hillman
twilkey@eac.gov, jthompson@eac.gov, Gavin S. Gilmour/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC,
cc Adam Ambrogi/EAC/GOV@EAC, Elieen L. Collier/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, bbenavides@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC
Subject Voting Fraud-Voter Intimidation Working Group Meeting

Dear Commissioners:

This is to let you know that the Working Group for our Voting Fraud and Voter Intimidation preliminary research project is scheduled to meet in EAC's large conference room the afternoon of Thursday, May 18. I will provide more information about this meeting to you later.

Peggy Sims
Election Research Specialist

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